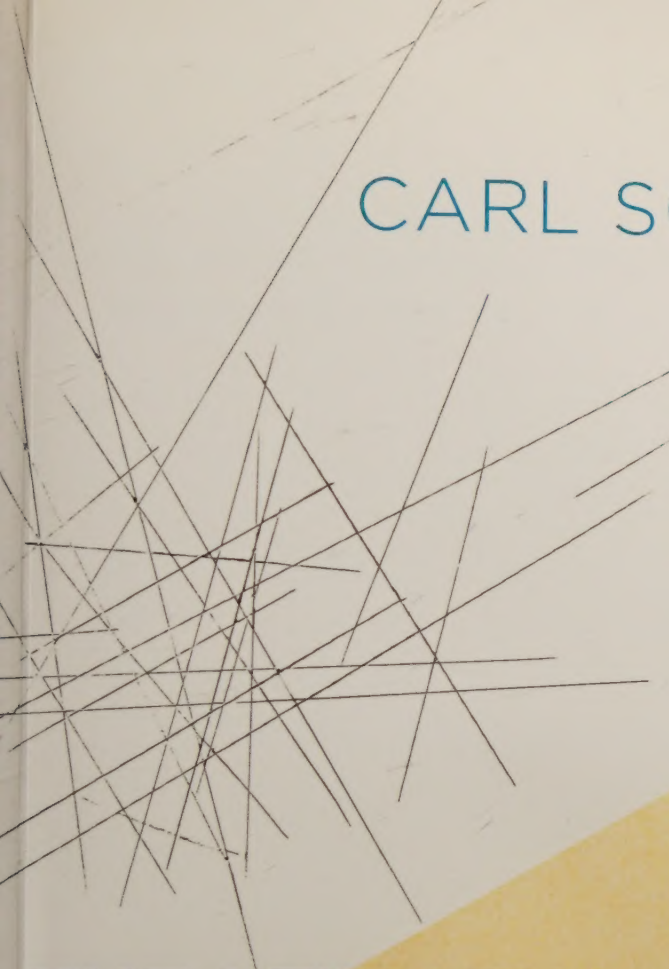

CARL SCHMITT

THE LEVIATHAN IN THE STATE THEORY OF THOMAS HOBBES

MEANING AND FAILURE OF A POLITICAL SYMBOL

Translated by George Schwab and Erna Hilfstein
With an Introduction by George Schwab
With a New Foreword by Tracy B. Strong

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The Leviathan in the State Theory of Thomas Hobbes

Carl Schmitt (1888–1985) was a legal and political theorist and constitutional layer. His many works include *Legality and Legitimacy, On the Three Types of Juristic Thought, Political Romanticism, Nomos of the Earth, Roman Catholicism and Political Form, The Crisis of Parliamentary Democracy, Political Theology,* and *The Concept of the Political.*

The Leviathan in the State Theory of Thomas Hobbes

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Foreword

Carl Schmitt and Thomas Hobbes: Myth and Politics

> The *protego ergo obligo* is the *cogito ergo sum* of the state.
>
> Carl Schmitt, *The Concept of the Political*

> For the good of the sovereign and people, cannot be separated.
>
> Thomas Hobbes, *Leviathan*, chapter 30

> [P]olitical actors remain ignorant of the satanic powers that are at work. These powers are inexorable and create consequences for their actions and also subjectively for themselves, against which they are helpless if they fail to perceive them.
>
> Max Weber, *Politics as a Vocation*

A very brief background: Carl Schmitt was a leading jurist in Germany during the period after World War I. Born in 1888, he took his *Habilitation* (the second doctorate that gave one the right to teach at the University level) in 1916 and taught at a series of universities, establishing an important reputation for himself. Responding perhaps to the political disorder that followed Germany's defeat in World War I and to the apparent inability of parliament to govern,[1] he was, from his first work, an advocate of a strong executive, including the possibility under certain circumstances of dictatorship. His work was important to a range of thinkers that extended across the entire political spectrum. In 1933, he joined the Nazi Party and was appointed to a chair at the University of Berlin. He became president of the Union of National-Socialist Jurists. In 1936 he was se-

1. Schmitt is not alone in this. See the magisterial article by Max Weber, "Parliament and Governance in a Reconstructed Germany," in *Weber: Political Writings*, ed. Peter Lassmann and Ronald Speirs (Cambridge: Cambridge University Press, 1994).

verely criticized in an official SS publication. Protected by Goering, he remained in his academic post but resigned from or let lapse most other public positions. He was detained for fourteen months by the Allies after the war although never officially charged with a crime. He did not return to teaching but became important to the development of right-wing thought in Germany in the postwar period. He maintained an active relation with a wide range of acquaintances including the Marxist-Hegelian Alexandre Kojève, the philosopher-theologian Jacob Taubes, and the politically unplaceable Ernst Jünger. In 1985, at the age of ninety-six, he died in Plettenberg, Westphalia, the town of his birth.[2]

* * *

—"Extraordinary, isn't it? This explosion of interest in Carl Schmitt these days."

—"But don't you know? That Carl Schmitt was a member of the Nazi Party? That he sought to align German law with Nazism? That he never apologized? That even after 1945 some of his writing remained anti-Semitic—as if he were excused from what he said before 1945! *Don't you know?*"

The only honest answer must be that one *does* know. And thus anyone writing on Schmitt has an obligation to give an account of what in his work is worth the effort. This is neither a matter of "freedom of thought" (which would reduce interest in Schmitt to subjective preference), nor of "knowing your enemy" (the question is rather to know who your enemy is and for what reasons).[3] Any account here must be substantive. For me

2. For elaboration see my forewords to Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 2007) (hereafter cited as *CP*) and to *Political Theology* (Chicago: University of Chicago Press, 2004) (hereafter cited as *PT*) as well as the material cited there.

3. While I have been arguing a version of this line of thought for some time now it is also very well made—and I am informed by— Etienne Balibar, "Le Hobbes de Schmitt, le Schmitt de Hobbes," his introduction to Carl Schmitt, *Le Léviathan dans la doctrine de l'état de Thomas Hobbes* (Paris: Seuil, 2002). I am also in what follows indebted to Wolfgang Palaver's "Carl Schmitt, mythologue politique" that is appended to the French edition. Let me also here acknowledge my debt to George Schwab's informative introduction and his fine translation.

Schmitt gives us purchase on questions like these: what are the reasons for the gradual and apparently continuing domination of executive over legislative power in Western democracies during the last century? What is the relation between the various faces of Western industrial democracies—on the one hand their adherence to rights, liberty, and social welfare, and on the other their repressive, disciplinary qualities, not just domestically but, given power, internationally—imperialism, colonialism, support for authoritarian regimes)? In historical terms, are we to think of fascism as a possible development of tendencies in modernity or as an aberration?[4]

The present work raises several questions.[5] First, in relation to the questions above, what is the place that Hobbes holds in the thought of Carl Schmitt; second, and consequent to the first, is the question of Schmitt's relation to anti-Semitism; lastly, to what degree can this book, written in 1938 and reissued in 1965, be read, as Schmitt claimed it should be, as an act of *resistance* to Nazism?

Schmitt and His Several Hobbeses

In relation to Hobbes, this book marks an evolution in Schmitt's thought. In *The Concept of the Political* (1932), Schmitt had written that Hobbes was "truly a powerful and systematic political thinker . . . [who] has drawn [the] simple consequences of political thought without confusion and more clearly than anyone else."[6] Indeed this was already toned down a bit from the original 1927 publication in the *Archiv für Sozialwissenschaft* in

4. See my "Philosophy and the Politics of Cultural Revolution," *Philosophical Topics*, vol. 33, no. 2 (2008), pp. 227–47.

5. Referred to as *LST* page number/German edition page number. The German edition is Carl Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes. Sinn und Fehlschlag eines politischen Symbols* (Stuttgart: Klett-Cotta, 2003). The German edition contains an appendix added in 1965, "Die vollendete Reformation. Zu neuen Leviathan-Interpretationen" [The consummation of the reformation: On new interpretations of *Leviathan*] with a consideration of F. C. Hood, Dietrich Braun, and Hans Barion.

6. *CP*, pp. 65, 67.

which Hobbes had appeared as "by far the greatest political thinker, perhaps the only truly systematic one." Hobbes was for Schmitt the thinker who best established the primacy of the political, the leader of the struggle against "depoliticization."[7]

In 1932 there also appeared Leo Strauss's "Notes on *The Concept of the Political*." Strauss had been working on Hobbes at least since the previous year.[8] In his 1932 remarks, Strauss argued what was to become the central point of his *The Political Philosophy of Hobbes* (written in German in 1935 but published only in English translation in 1936): Hobbes was in fact the founder not of the idea of autonomous politics but of *liberal* politics.[9] Thus, Strauss argued, the Hobbes Schmitt so admired remained in the end of the liberal bourgeois world that Schmitt had sought to critique. Shortly thereafter, and continuing through the appointment of Hitler as chancellor, Schmitt sought in a number of texts, most notably *Staat, Bewegung, Volk*, to theorize what he called the "legal . . . German Revolution" in terms of a "total state."[10] The "total state" was understood to be a unity, indeed a fusion, of state and civil society as well as of the "movement" and the "people."

Although Schmitt does not explicitly mention Strauss's 1936 book in this book, it is most likely in response to the force of Strauss's critique that Schmitt altered his understanding of Hobbes. Schmitt's argument in this book and the 1937 article appended to it is that the new "god" that is created in the covenanting of the leviathan/sovereign is only god "in a juristic sense and not in a metaphysical sense. The sovereign-representative

7. See the Schmitt article, "The Age of Neutralizations and Depoliticizations," in *CP*.

8. These are appended to *CP* cited in note 2.

9. The Hobbes book was not published in German until 1964. See Leo Strauss, *Gesammelte Schriften* (Stuttgart: Metzler, 2001), vol. III. Ironically Strauss was able to complete his Hobbes work in England (and away from Nazi Germany) because Schmitt had helped him obtain a Rockefeller Fellowship.

10. Carl Schmitt, *Staat, Bewegung, Volk* [State, movement, people] (Hamburg: Hanseatische Verlag, 1934), p. 8.

person cannot thus delay the complete mechanization of the state."[11] For Schmitt, the Hobbesian state is not a "total person" but rather a *mechanism* and as a mechanism it is "incapable of any totality."[12]

Schmitt now reads Hobbes as setting the stage for what will become liberal politics. Hobbes's work will be furthered by Spinoza in his *Tractatus-theologico-politicus*. "Only a few years after the appearance of the leviathan," writes Schmitt, "the glance of the first liberal Jew fell on the barely perceivable crack. He immediately recognized there the large fracture into which modern liberalism would fall and in which the whole of the relationship that Hobbes had constructed between interior and exterior, between public and private, could be inverted into its opposite."[13] Hobbes, it appears, made a tiny mistake but from that small hole the entire dike collapsed.

What was this crack that Hobbes seems to have missed? Why was it a "liberal Jew," let alone the "first" one, who turned the crack into a great empty space? Schmitt starts his book with a consideration of the mythic resonances of the figure of the leviathan. On the one hand, the leviathan is a great aquatic animal and thus appropriate to the seventeenth-century development of England as primarily a sea power. But, says Schmitt, this is politically problematic. "A big fish became a symbol connected with the typical continental process of state building of European land powers. The English Isle and its world-conquering seafaring needed no absolute monarchy, . . . nor a juridical system based on the state's law" [*noch eines gesetzesstaatlichen Rechtssystems*].[14] It follows that the English would not appreciate Hobbes; indeed, they took him to be the "monster from Malmesbury." As Schmitt puts it: "What could have been a grand signal of restoration of the vital energy and political unity . . . became a grotesque horror picture." Worse, on the continent (where "Hobbes's state had the

11. Carl Schmitt, "The State as Mechanism in Hobbes and Descartes," in this volume, p. 98.

12. Ibid., pp. 98, 100.

13. *LST* 57/86. Translation modified (George Schwab leaves out "first").

14. *LST* 80/121 (translation modified).

greatest actuality"), the leviathan symbol was unable to "attain the unproblematic immediacy" that images require to be effective—it was a *sea* animal.[15]

We are here at the center of Schmitt's theory of political myth.[16] If you invoke a myth, says Schmitt, *volens nolens* you invoke *all* of the elements of it. "No chain of thought—no matter how clear—can stand up against the force of genuine mythical images." Hobbes failed to realize that he was "conjuring up the invisible forces of an old, ambiguous myth."[17] What happens, according to Schmitt, is that, as an agnostic, Hobbes makes religious truth not a subject matter for the state.[18] Thus in this book Schmitt criticizes Hobbes for allowing the privacy of belief. (Hobbes says that it does not matter what you think as long as what you *do* is what the sovereign requires.) It does not matter what you believe as long as you conform to the laws of the sovereign and do not hold beliefs that lead you to deny the authority of the sovereign. Hobbes designates the leviathan a "great man" but also a machine (following to some degree Descartes). By allowing private beliefs, however, he in fact renders the state mostly machine and sets in motion a tendency to "technicity" and the decline of the political that Schmitt had addressed in *Political Theology* and *The Concept of the Political*. In this sense, Schmitt has accepted one part of the thrust of Strauss's critique. "In the eighteenth century, the leviathan as *magnus homo*, as the godlike sovereign person of the state, was destroyed from within. The distinction of inner and outer became for the moral god a sickness unto death." Schmitt goes on to say that what survives is the administrative apparatus—the machine. "The *legislator humanus* became a *machina legislatoria*."[19]

15. *LST* 81/122.

16. See the discussion in my introduction to *PT*, p. xxviii.

17. *LST* 81/123 (translation modified).

18. C.f. Leo Strauss, *Die Religions-Kritik Spinozas*, in *Ges.Schriften*, Bd I (Stuttgart: Metzler, 2001), p. 145, where Hobbes is said to be an agnostic although one who never took the "single step" to atheism.

19. *LST* 65/99.

As such, Schmitt has given us a version of the story of rationalization and disenchantment that was powerfully put forward by Max Weber.[20] There is, however, more. The leviathan is a great man, it is a mortal god, and it is a machine. It is also a monster. The conception of the state as a great machine itself "succumbed from the distinction between the state and individual freedom. That happened in an age when the very organizations of this human freedom were no more than the knives with which the anti-individualist forces sliced up the flesh of the leviathan and divided it among themselves. Thus did the mortal god die a second time."[21]

Who killed him? The answer was set up at the beginning of the book in Schmitt's discussion of the myth of the leviathan. There he recalls the opposition between the sea monster leviathan and the earth monster behemoth (the second monster provided Hobbes with the title of his book about the revolution on and of English soil).[22] In the battle between the two monsters, "the Jews stand by and watch how the people of the world kill one another; in their eyes such practices of 'ritual slaughter and massacre' conform to the law and are 'kosher' and this is why they eat the flesh of those who have died and live off of it." In mythology, the leviathan is also a serpent or dragon, a beast that "non-Jewish people [see] . . . as protective and benevolent" whereas "near-Eastern and Jewish mythology" find it to be "hostile and evil."[23] Later in the book, Schmitt will attack "the Jewish philosopher Stahl-Jolson" for speaking in favor of the clear-cut separation between religion and politics, thereby extending the position

20. See the excellent analysis in Andrew Norris, "Carl Schmitt's Political Metaphysics: On the Secularization of 'the Outermost Sphere,'" *Theory and Event*, vol. 4, no. 1 (2000). Online only at http://muse.jhu.edu/journals/theory_and_event/v004/4.1norris.html.

21. *LST* 74/118 (translation modified).

22. Schmitt will publish *Land und Meer. Eine weltgeschichtliche Betrachtung* [Land and sea] in 1942 (Washington, DC: Plutarch Press, 1997). See also Christopher Leigh Connery, "Ideologies of Land and Sea: Alfred Thayer Mahan, Carl Schmitt, and the Shaping of Global Myth Elements," *boundary* 2, vol. 28, no. 2 (Summer 2001), pp. 173–201.

23. *LST* 9/18–19 (translation modified). Similar thoughts are expressed with more detail in *Land und Meer*, pp. 9–10. It is not clear what Schmitt would have made of Grendel . . .

already advanced by Spinoza and Moses Mendelssohn.[24] Crudely, Hobbes understood the need for the total state but inadvertently left a crack that Jewish thought exploited into a full-blown fissure.

Schmitt, the Jews, and Anti-Semitism

Schmitt blames the final destruction of the idea of a unified political realm on the Jewish and Near-Eastern attitude toward the myths that make such a realm possible. In a recent book, Raphael Gross has made a forceful case for the claim that Schmitt's anti-Semitism was not simply that of a careerist but is embedded in the deep structure of his thought.[25] For Gross, "the Jew" lies under one pole of each of the binary oppositions that Schmitt works with: the Jew is "enemy," the "Anti-Christ." Lacking spatial and territorial definition they undermine all notions of "nomos."

There is clearly something to Gross's accusation, but what exactly? In the first chapter Schmitt attributes to Strauss the claim that Hobbes says that Jews are responsible for the distinction between religion and politics, a distinction that, Schmitt says, Hobbes considered nefarious. Hobbes, for

24. *LST* 69/106. It is important that Schmitt insists on calling Friederich Stahl a Jew. Stahl was an ecclesiastical lawyer who had converted to Lutheranism at age nineteen, married a gentile (a woman, remarks Schmitt, "*die deutscher Herkunft war*"), and was very active in strengthening the political position of the Lutheran Church. In *CP* (1927), Schmitt had spoken of him favorably, referred to him as "Stahl" (not "Stahl-Jolson"), and associated him with de Maistre, Bonald, and Donoso Cortes. It is also noteworthy that Schmitt does not mention Kant's praise of Mendelssohn. In a letter Kant says: "You have known how to reconcile your religion with the liberty of conscience in such a manner that no one would have thought it possible (of your religion) and to an extent that no one else can boast" and in the *Metaphysics of Morals* holds this up as an example. Schmitt seems quite sensitive to what he is doing in *LST* as he defends his attribution of Jewishness to Stahl in two prickly notes (*LST* 75/107, 109).

25. Raphael Gross, *Carl Schmitt and the Jews. The "Jewish Question," the Holocaust, and German Legal Theory* (Madison, WI: University of Wisconsin Press, 2007). In a broader context, Vilho Harle maintains much the same thing in *The Enemy with a Thousand Faces. The Tradition of the Other in Western Political Thought and History* (Westport, CT: Greenwood Press, 2000), pp. 145–46.

instance, says in *Leviathan*, chapter 12, that the Romans "made no scruple of tolerating any religion whatsoever in the city of Rome itself, unless it had something in it, that could not consist with their civil government: nor do we read, that any religion was there forbidden, but that of the Jews; who (being the peculiar kingdom of God) thought it unlawful to acknowledge subjection to any mortal king or state whatsoever."[26] For Schmitt, however, what is right in Hobbes is not so much that he is against the *Jews* as that he is against *any* disaggregation of power into religion on the one hand and politics on the other—including that by Catholics and Presbyterians. The ancients had no such separation—Hobbes knew this and Schmitt thinks them and him right. Indeed, Schmitt notes that Hobbes saw the sovereign as the "lieutenant of God"—thus as pope (traditionally referred to as "the lieutenant of God") *and* ruler in one.[27]

As noted, Hobbes, however, did open up the tiny crack into which Spinoza and others rushed and enlarged. Here one must say that Schmitt's anti-Semitism is first and foremost an *anti-Judaism*.[28] (It is of course important to remember that in actual practice the difference would have been moot in the Germany of that time.) When Schmitt says "Jesus is the Christ" is the most important sentence in Hobbes, he is attributing to Christianity a political quality. It is to claim that the integrity or unity of political society is of central importance. To say "Jesus is the Christ" is to say that he is the Messiah; that is, he is anointed and appointed by God to

26. In *Leviathan* chapter 49 Hobbes in fact says: "Seeing then our Savior, and his apostles, left not new laws to oblige us in this world, but new doctrine to prepare us for the next; the books of the New Testament, which contain that doctrine, until obedience to them was commanded, by them that God had given power to on earth to be legislators, were not obligatory canons, that is, laws, but only good, and safe advice, for the direction of sinners in the way to salvation, which every man might take, and refuse at his own peril, without injustice."

27. *LST* 82/125.

28. There is a complex issue here that I cannot go into. It has to do with Schmitt's attitude toward Christianity as it is practiced. Jacob Taubes in *Ad Carl Schmitt. Gegenstrebige Fügung* (Berlin: Merve Verlag, 1987), p. 25, writes that "for Schmitt Christianity was 'Judaism for the peoples,' against whose power he always desired to rise up. But Schmitt saw ever more profoundly how impotent such a 'protest' against God and history is."

lead a people and that what he does transcends all law.[29] ("Christ" is not a proper name but is a Greek translation of the Hebrew *mashiah* or "messiah"—the "anointed one.") That the Jew (according to Schmitt) does not accept this means that he will always be in contradiction to a unified society for the reason that he claims a source of right (*Recht*) that is external to the society (God's Law). This is not (at least not primarily) a *biological* anti-Semitism. It is worth noting, however, that neither the Nazis (officially, though not in everyday discourse) nor Schmitt spoke of *Rasse* (race) when discussing these matters. They did both speak of *Artgleichheit* (having the same type, sometimes translated as "racial identity") and *Artfremdheit* (of a foreign kind or species). *Art* can mean "kind," "sort," "species," "nature," "manner," "way," or "behavior."[30]

The problem comes from the fact that from at least 1923 Schmitt claims that sovereignty presuppposes the need for homogeneity (*Gleichartigkeit*) of the political body (and not pluralism); thus his anti-Judaism is part of his construction of national identity. In the first chapter, Schmitt had favorably cited "the Jewish scholar Leo Strauss" for his recognition that Hobbes had thought it important to "struggle" to restore "the original unity" of the spiritual and secular powers.[31] However, Schmitt argues,

29. See my introduction to *PT* as well as my "The Sacred Quality of Politics: Remarks on Schmitt, Hobbes, and Saint Paul," forthcoming in the *Jahrbuch für Philosophie*.

30. See George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970), p. 136, note 8. For a good summary of Schmitt's most violent anti-Semitic statements see Heinrich Meier, *The Lesson of Carl Schmitt* (Chicago: University of Chicago Press, 1998), pp. 151–73.

31. *LST* 10–11/20–21. The reference is to Strauss's 1930 book *Die Religions-Kritik Spinozas*, in *Ges.Schriften*, Bd I, pp. 149–330. Strauss argues that Spinoza seeks to undo the theological prejudices that keep the mind from "*freie Wissenschaft*" (*Die Religions*, p. 156). Strauss will want to argue against Spinoza that philosophy cannot refute the possibility of revelation, a theme that will remain with him throughout his life. See also Strauss's 1967 "Jerusalem and Athens," in *Jewish Philosophy and the Crisis of Modernity*, ed. K. H. Green (Albany: SUNY Press, 1997), pp. 377–405. Strauss argues that for one to have "Wisdom" one must partake of both Athens and Jerusalem (p. 379).

Strauss is misleading on Hobbes on Jews.[32] Strauss seems to hold that Jews were responsible for the distinction between the spiritual and the secular realm. If it were the case that the Jews are solely responsible for the separation, then we could maintain, as does Strauss, the incompatibility (but also the reality and thus necessity) of a realm of reason (Athens) *and* a realm of revelation (Jerusalem—God's Law, which is necessarily in tension with political sovereignty). For instance, in chapter 5, referring to "the Jew Moses Mendelssohn," Schmitt notes that Mendelssohn's book *Jerusalem, or On Religious Power and Judaism* is "also at the origin of the first great and important confrontation between German wisdom and the Jewish tactic of distinguishing." Jews, for Schmitt, seek to profit from the space that Hobbes initially opens up between the secular and the spiritual. Bluntly, Schmitt's anti-Semitism here is of a piece with his reasons for opposing pluralism and indirect powers. What makes Strauss wrong also makes Hobbes wrong and for Schmitt also makes all of liberalism wrong. If there were such a thing as a noncrude anti-Semitism, Carl Schmitt seems to have it. (And I repeat: in life these distinctions mattered little if you were in Auschwitz.) What Schmitt is not is a liberal.

In fact, it is with some degree of irony that one could say that Schmitt's position is much like that of Marx in his "On the Jewish Question." In Germany, Jews had been granted political rights during the Napoleonic period. These had been withdrawn after Napoleon's defeat. By the 1830s, as Jews had moved into increasingly greater positions of prominence and with the support of liberal Gentile political forces, a push was made to grant political rights. Bruno Bauer, a "Young" and "Left" Hegelian, had argued that Jews cannot be emancipated because they cling to their religion. For Bauer, there can be no special claims (being recognized as a Jew and a citizen, or for that matter as a Christian and a citizen). Marx's response was that this was empirically wrong (he instantiates the United States) and that Bauer had confused political and human emancipation.

32. See similar considerations in Palaver, "Carl Schmitt, mythologue politique," pp. 205–6.

Emancipation in the modern state proceeds only by depoliticizing certain areas (e.g., religion) but this simply preserves the realm of particularity and inequality. (If property is no longer a qualification for voting, the regime of property still remains.) "The Jew has emancipated himself in a Jewish manner, not only because he has acquired financial power, but also because, through him and also apart from him, *money* has become a world power and the practical Jewish spirit has become the practical spirit of the Christian nations."[33] In effect, says Marx, what Bauer wants is to destroy the possible unity of human life by moving religion to civil society and separating it off from the political realm. In effect, "human" plays the role for Marx that "political" does for Schmitt. Schmitt certainly has no sympathy or support for what Marx calls species-being—his unity is of a *Volk*—but Marx's critique of liberal attempts such as Bauer's is made on grounds that are structurally analogous to those of Schmitt.

His Relation to Nazism

If Schmitt sought to strengthen and recover the possibility of a true, unified *Volk*, what was his relation to Nazism? A *Volk* is not just a "people" but people unified by having a common history, language, and destiny. We know that Schmitt did join the NSDAP in 1933 and remained a member until the end. Many defenders of Schmitt argue, however, that his foremost concern in the early 1930s was to strengthen the Weimar regime. I do not think it credible that this was Schmitt's intent. It is true that Schmitt sought in the pre 1933 period to persuade the German chancellors (Franz von Papen, then in 1932 Kurt von Schleicher) to proscribe all those political parties that were "enemies of the constitution"—by which he meant the Communists and the Nazis. The conservative chancellors were

33. Karl Marx, "On the Jewish Question," in *Selected Writings* (Indianapolis: Hackett, 2002). In the first of the *Theses on Feuerbach*, Marx will identify and criticize the opposition of theoretical and practical as "dirty-Jewish." "Jewish" is associated by Feuerbach and Marx with the practical egoism of civil society—thus the distinction is the same as in "On the Jewish Question." Heinrich Meier, in *The Lesson of Carl Schmitt* (Chicago: University of Chicago Press, 1998), associates Schmitt with Bauer rather than Marx (p. 153).

to some degree receptive to Schmitt's position and sought to invoke (and eventually did) Article 48 of the Weimar Constitution that permitted what Schmitt had called "commissarial dictatorship."[34] It is important to remember that for an average middle-class German the situation did indeed appear dire: there were frequently pitched battles in the streets, often between Communists and Nazis. The parliament appeared incapable of resolving the situation. In the 1930 elections, the two strongest winners were the Communists and the National Socialists at the expense of the parliament and democratic process-oriented middle parties. Violent incidents became common, especially after von Papen lifted the ban on the Nazi *Sturmabteilung* S.A. In one such case involving Schmitt, the *Preussenschlag* case of 1932 where, after the *Altonaer Blutsonntag* (a bloody gunfight in the town of Altona between the SA and Communists), Chancellor von Papen had dismissed the Prussian SPD (socialist) government with an invocation of Article 48. The Prussians had challenged the move. At the trial, Schmitt, in his brief to the court for von Papen, closed with a citation from Lincoln to the effect that a "house divided cannot stand."[35]

Schmitt's policy aims were certainly not to strengthen the Weimar Regime but, by eliminating the elements deemed "unconstitutional," to *replace* the Weimar regime with an authoritarian nationalist regime that would express the "real will" of the German people.[36] It is fair to say that at this point Schmitt hoped that such a regime could be shaped by eliminating through such dictatorship the socialists of the left and the right. (The S in NSDAP was not there without reason.)

34. Carl Schmitt, *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Leipzig: Duncker und Humblot, 1921).

35. See the account in the excellent Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law* (Durham: Duke University Press, 1997), pp. 164–76. Lincoln was of course citing the Bible (Luke 11: 17): "Every kingdom divided against itself is brought to desolation; and a house divided against a house falleth." See also Léon Schirmann, *Altonaer Blutsonntag 17. Juli 1932. Dichtungen und Wahrheit* (Hamburg: Ergebnisse Verlag, 1994).

36. See Olivier Beaud, *Les derniers jours de Weimar. Carl Schmitt face à l'avènement du nazisme* (Paris: Descartes et Cie, 1997).

However, when the Nazis obtained 37.2 percent of the vote in the July 31, 1932 elections and 33.1 percent the following November (after the formation of a government had proved impossible), exclusion of the Nazi Party was simply not possible. Fearful of Communism both domestic and foreign, attracted by Hitler's decisiveness after his appointment as chancellor (Article 48 remained in force), and, possibly, as George Schwab suggests, intrigued by the fact that the new government's actions seemed to confirm his theoretical writings, Schmitt had no difficulty in deciding to join the NSDAP.[37] He proceeded to publish the same year an essay titled *State, Movement, People*.[38] In it he tried to develop an articulated sense of these elements.

> Each one of the three words State, Movement, People can be used to designate the entirety of the political unity. Each also describes however at the same time a particular aspect and a specific element of this whole. So the State can be understood in the narrower sense as the political-statist part, the Movement as the political-dynamic element, and the People as a growing unpolitical side under the protection and in the shadow of political decisions.[39]

Schmitt goes on to give primacy to the state: this was soon to get him into trouble with Nazi theorists for whom the unity of the movement as personified in the leader and the people was primary. As noted he was severely criticized in two articles in the SS publication *Das schwarze Korps*. To be so attacked was not like getting a bad review—such attacks were, as Günter Maschke notes, "life-threatening."[40] With explicit reference to Schmitt, Waldemar Gurian, a social and religious theorist of considerable importance and brilliance who had been a student of Schmitt's

37. George Schwab, introduction to this volume, p. xxxvi.

38. Schmitt, *Staat, Bewegung, Volk*. Volk refers to a people with a common history and destiny.

39. Schmitt, *Staat, Bewegung, Volk*, p. 12. Schwab also discusses part of this quote on p. xxxvii.

40. Günter Maschke, "Zum 'Leviathan' von Carl Schmitt," in *LST* (German edition), p. 184.

and was now in exile in Switzerland, wrote an article entitled "On the Path to Emigration or the Concentration Camp?"[41]

This is the context in which Schmitt wrote his Hobbes book. If Schmitt was protected by Hermann Goering from direct consequences, he nonetheless clearly had important reasons to be frightened. In his interrogation after the war he indicated that until 1936 he "considered it possible to give meaning to [the Nazi] catchwords." After the war he claimed that that the present book was written as a form of resistance to and critique of Nazism (or at least what Nazism had become or revealed itself as). Martin Heidegger would make much the same claim about his lectures on Nietzsche and his refusal there of any biological interpretation. As I noted in my introduction to *Political Theology*, Schmitt claimed to have written letters to friends in 1938 in which he compares himself to Benito Cereno, the ship captain of Melville's novella who is forced to go along with the slaves who have taken over his ship.[42] The Hobbes book would thus have an esoteric message made necessary by a time of persecution.

To this there are two questions: first, does the Hobbes book in fact constitute, albeit esoterically, an act of resistance to the Nazi movement? And second, what does one make of such an act if there is one?

It is the case, I think, that several of the doctrines put forth in this book go against the orthodoxy of the Nazi state. His attack on indirect powers and pluralism, the concept of the total state (thus with no privilege to a party), the apparent approval of the "law-state elements of Hobbes' theory of state and jurisprudence" [*gesetzesstaatlichen Elements der Staats-und Rechtslehre von Hobbes*],[43] the approval of the doctrine "no punishment, no

41. Gurian was a German-Russian Jew who had converted to Catholicism. He was the one who designated Schmitt as the "*Kronjurist des Dritten Reiches.*" He later emigrated to the United States and taught political science at Notre Dame, where he founded the journal *Review of Politics*. He was a friend of Hannah Arendt who devotes a chapter to him in her *Men in Dark Times*.

42. See the discussion in *PT*, pp. viii–xi, xxiii, and the references cited there.

43. *LST* 71/112.

crime without law" [*nulla poena, nullum crimen sine lege*][44]—do in some sense constitute a setting himself apart from official Nazi doctrine.

Do they though constitute an act of *resistance?* Here I would like to associate myself with the analysis of Etienne Balibar.[45] He argues that what resistance there is comes not from what Schmitt chooses to say *about* Hobbes but rather from Hobbes himself. Schmitt's engagement with Hobbes is constant and changing over the course of his life—and this is because Schmitt keeps coming up against questions that he cannot answer. The arguments in *Staat, Bewegung, Volk* don't in the end work either as a constitutional alternate to Weimar or as an attempt to formulate a theory of the Nazi state. Schmitt accuses legal positivism (e.g., Kelsen[46]) of necessarily but unconsciously combining normativism and decisionism. To this Schmitt opposes a theory of law that combines decisionism and institutionalism. The problem with doing this in relation to Hobbes is that Hobbes combines decisionism and institutionalism in a manner that also equates natural law with civil law. As Hobbes says in the latin *Leviathan:* "Natural law is eternal, divine and inscribed only in human hearts. But there are very few men who know how to examine their own heart and read what is written there? Thus it is from written laws that men know what they must do or avoid."[47] Thus Schmitt's engagement with Hobbes brings him back again and again to the inextricable relation of the political and the normative.[48] That he takes Hobbes seriously means that he cannot remain content with many of his own formulations.

44. *LST* 73/115.

45. Balibar, "Le Hobbes de Schmitt," pp. 47–51.

46. See the discussion in my introduction to *PT,* pp. xvii–xviii.

47. See Thomas Hobbes, *Léviathan*, ed. F. Tricaud (Paris: Siley, 1988), p. 700. See also my "The Sacred Quality of Politics: Hobbes, Schmitt, and Saint Paul" (forthcoming) and "How to Write Scripture: Words and Authority in Thomas Hobbes," *Critical Inquiry*, vol. 20 (Autumn 1993).

48. Hobbes, *Leviathan*, chapter 30: "It belongeth therefore to the office of a legislator, (such as is in all commonwealths the supreme representative, be it one man, or an assembly,) to make the reason perspicuous, why the law was made; and the body of the law itself, as short, but in as proper, and significant terms, as may be."

What finally are we to make of Schmitt's anti-Judaism? I noted above that it is a position consonant with his hostility to pluralism, indirect powers, and the political theory of the Enlightenment in general. Heinrich Meier argues, correctly I think, that Schmitt's anti-Judaism had a different source than Nazi anti-Semitism but led him easily to attach himself to the Nazi position.[49] It is also the case that his pronouncements on these matters during the 1933–36 period are of a violence that goes well beyond a genteel bourgeois anti-Semitism.[50] It is further the case that even postwar, although more quietly, Schmitt continues to espouse an anti-Judaism.

The source of this anti-Judaism comes from Schmitt's belief that the event of Christianity *is political rather than religious*. And this in turn comes from his engagement with and reading of Hobbes. In *Leviathan*, chapter 43, Hobbes writes that the proclamation of "Jesus is the Christ" entails obedience to the laws of the sovereign even if that sovereign be "an infidel." As noted, the word "Christ" is not a proper name but is a Greek translation of the Hebrew *mashiah* or "messiah" — the "anointed one." So Jesus as the Messiah entails the reestablishment of the earthly kingdom and thus sovereignty. As Hobbes says in *Leviathan*, chapter 41:

> If then Christ whilst he was on earth, had no kingdom in this world, to what end was his first coming? It was to restore unto God, by a new covenant, the kingdom, which being his by the old covenant, had been cut off by the rebellion of the Israelites in the election of Saul. Which to do, he was to preach unto them, that he was the Messiah, that is, the king promised to them by the prophets.

49. Meier, *The Lesson of Carl Schmitt*, pp. 153–55.

50. In his address to a 1936 conference he had organized on the subject of "Judaism in Jurisprudence" he says, "but the profoundest and ultimate meaning of this battle [against Judaism and Bolshevism] and thus also of our work today, lies expressed in the Führer's sentence: 'In fending off the Jew, I fight for the work of the Lord.'" Cited from Meier, *The Lesson of Carl Schmitt*, p. 154. The sentence in question comes from the end of the second chapter of *Mein Kampf* (München: NSDAP Zentralverlag, 1935), p. 70. The passage is preceded by: "If the Jew with the help of his Marxist concepts triumphs over the peoples of this world, then his prize will be the death-dance of mankind, then this planet will once again traverse the aether devoid of human beings as it had done for millions of years."

Schmitt picks up on this and in the *Glossarium* (May 23, 1949) draws a severe conclusion:

> The most important sentence of Hobbes remains: Jesus is the Christ. The power of such a sentence also works even if it is pushed to the margins of a conceptual system of an intellectual structure, even if it is apparently pushed outside the conceptual circle. This deportation is analogous to the domestication of Christ undertaken by Dostojewski's Grand Inquisitor. Hobbes expresses and grounds scientifically what Dostojewski's Grand Inquisitor does: to neutralise the effect of Christ in the social and political sphere; to de-anarchize Christianity, while leaving it at the same time as a kind of legitimating effect and in any case not to do without it. A clever tactician gives up nothing as long as it is not completely useless. Christianity was not yet spent. Thus we can ask if the grand Inquisitor of Dostojewski is closer to the Roman church or to Hobbes' sovereign. . . . Name your enemy and I will tell you who you are. Hobbes and the Roman Church: the enemy is our characteristic question as form."[51]

Schmitt, it should be noted, defended the Inquisition as a model of fairness (at least in theory).

> It was a terribly humane measure when Pope Innocent III created the "Inquisitorial Law." The Inquisition was probably perhaps the most humane institution conceivable, since it came from the standpoint that no one accused could be condemned without a confession. When, in the course of a century, the practice of the Inquisition degenerated into torture, because one wanted a confession, and had to extort it, that is indeed a dark chapter of cultural history, but seen in terms of legal history, even today the idea of Inquisition can hardly be touched.[52]

51. Carl Schmitt, *Glossarium. Aufzeichnungen der Jahre 1947–1951* (Berlin: Duncker und Humblot, 1991). These paragraphs draw from my "The Sacred Spirit of Politics: Hobbes, Schmitt, and Saint Paul" (forthcoming).

52. Carl Schmitt, *Der Angriff*, September 1, 1936, quoted from Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (Brooklyn: Verso, 2000), p. 203.

Schmitt notes, as had Hobbes, that there is in Christianity a dangerous tendency to introduce rebellion into the political realm. Hobbes and Hegel in particular try to tame this tendency and make use of it in the political realm by linking religion to the state. Schmitt's approval is strong: Hobbes and Hegel are, as is the church, what he calls *katechontes*, defined by St. Paul 2 Thessalonians 2: 6–7 as "those who hold" back the apocalypse, thus for Schmitt those who slow down the complete neutralization of what is important about religion for the state.[53] While there are *katechontes* in every period, the greatest one has been the Catholic Church and Schmitt thus finds himself in alliance with the Grand Inquisitor in Dostojewsky.[54]

What is striking here is that Hobbes and Schmitt think the leviathan (as mortal God, hence as Christ/Messiah *holds back* the kingdom of God on this earth or at least makes no move to bring it about. This is why this is political theology and not theological politics. Hobbes is clear that once the Tower of Babel destroyed the unity of the human species and the Hebrews elected Saul as king there would and could be no actual kingdom of God on this earth until the Second Coming. Until that time that ends time—the *eschaton*—the kings of this earth were in effect Christs and they should therefore be obeyed in the manner that one would obey God as king. Earthly kingdoms thus are Godly in that they hold back human instincts toward anarchy and chaos until the Second Coming. If Jesus as *God* will be absent until he returns, we need all the more a Jesus of this earth—a sovereign—until then. Jesus as *God* plays no real role in Hobbes's vision of politics (as long as people do not act contrary to the commands of the

53. The *katechon* reappears in the thought of Dietrich Bonhoeffer but not as a being exempt from sin as he tends to in Schmitt's work. See the discussion in Wolfgang Palaver, "Collective Security. Opportunities and Problems from the Perspective of Catholic Social Teaching," in Peace in Europe, *Peace in the World: Reconciliation, Creation and International Institutions*, Hrsg. von Iustitia et Pax—Österreichische Kommission, Iustitia et Pax Dokumentation 4 (Wien: Südwind-Verlag, 2003), 86–102.

54. I am helped in part of this by the work of Wolfgang Palaver in the French edition of the *Leviathan* book.

mortal God they can think privately what they want). Like the Grand Inquisitor, Hobbes's politicization of theology keeps the anarchic truth of the God Jesus away from this world. And this means that Jews, who deny that Jesus is the Messiah, constitute a threat to the entire political doctrine of Schmitt. This is the oldest form of anti-Semitism given a new twist: the denial of Christ as the Messiah constitutes a threat to the possibility of political order and furthers the depoliticization and neutralization of humanity.

Concluding Thoughts

What might one say at the end? The friend-enemy definition of politics that underpins Schmitt's analysis has the advantage of keeping combatants from seeing their enemy as criminal. He writes in *The Concept of the Political:* "As such humanity cannot wage war because it has no enemy, at least not on this planet. The concept of humanity eliminates the concept of the enemy, because in relation to the enemy one does not cease to be a human being and here there is no particular differentiation."[55] Should however a conflict occur where one group conceives of itself as fighting for humanity, then its opponents will be understood as criminals and a danger to "humanity." At the end of his book he tells us: "The opponent is no longer called enemy, but becomes a breaker and disturber of the peace, hors la loi and hors l'humanité."[56] Schmitt wrote these words in apparent response to the "war to end all wars" as conceived by Woodrow Wilson. They anticipate however the accusation of "crimes against humanity" that has become increasingly standard fare since the trials at Nuremberg. The grounds for this universalism, however, are laid in the Pauline universalism, the universalism that claims to affect everyone in the same way. If the political requires friends, enemies, and conflict, then in the end Jesus's life undermines Schmittian politics—which is why Schmitt is on the side of the Grand Inquisitor.

55. *CP* 54–55.

56. *CP* 79 (translation modified).

Whether or not one accepts his model of the church, the strength in Schmitt's theory is that he recognizes that human beings will respond to the possibility of a vigorous public sphere. It is for this reason that the *Volk* legitimates and is legitimated by the sovereign. Liberalism, with its neutrality toward final claims, is incapable of providing this. Here one thinks of the work of John Rawls, who explicitly denies that his theory of justice requires a notion of truth and is composed only of that to which reasonable beings with a similar history will rationally consent.[57] This perhaps seems safer but it may also make people yearn for something more and runs the risk that the satisfaction of that yearning will be disastrous.

There are, however, also consequences to construing matters as does Schmitt. First, if you are not an enemy —and here it is telling that he portrays Jews as *bystanders* seeking to profit from conflicts —and if you are not a criminal (as above) —then you are a monster. Judaism plays an important role in Schmitt's thought as it is the source of the denial of Christ. In the picture that ends his *Leviathan* book (p. 86) he gives us a strange drawing of a great sea monster. The picture only makes sense if one places it back in its original context.[58] There one finds that the sea monster has been caught on a fishing line by God, using a hook that has Jesus on the cross for bait. The picture in Schmitt's book eliminates everything except the recumbent fish. Whereas the leviathan, says Schmitt, without the

57. John Rawls, "Justice as Fairness: Political not Metaphysical," in *Collected Papers* (Cambridge, MA: Harvard University Press, 2001), p. 395. This matter is more complex however. One should reflect carefully on the difference and similarity of the usage by each of "the political." For both it can take place in a realm that is not law governed — for Schmitt in the state of exception and for Rawls in the original position. See Miguel Vatter, "The Idea of Public Reason and the Reason of the State: Schmitt and Rawls on the Political," *Political Theory*, vol. 36, no. 2 (2008), pp. 239–71.

58. I am indebted here to Meier, *The Lesson of Carl Schmitt*, pp. 114 and 174. Meier notes that although Schmitt does not cite the original picture he does cite the article on "Antichrist" in the same volume in which the original appears. If you were to look up "Antichrist" you would come across the full picture.

Messiah is an "externally all-powerful and inwardly impotent concentration of power," when caught on God's fishhook it becomes the total state.[59] Thus Schmitt gives us only the fish and not the whole picture as a warning of the consequences of Judaism.

The second consequence appears in what Schmitt makes available as the kind of justification that the present American administration offers in relation to the "war on terror." Since any terrorist attack is by definition an exceptional case and monstrous (for the United States at present, "Islamofascism" takes the place of Judaism), the president can claim to act with emergency powers. And indeed, on September 14 and 23, 2001, President Bush invoked the National Emergencies Act.[60] and has since then justified his actions (such as spying on individuals without court orders) because "it is a necessary part of my job."[61] Jay Bybee, head of the Legal Council of the Justice Department, said in 2002 that "the President enjoys complete discretion in the exercise of his Commander-in-Chief authority and in conducting operations against hostile forces" and a memo from February of that year argued that "detainees have no inherent protection under the Geneva Convention—the condition of their imprisonment, good, bad, and otherwise, is solely at the discretion of the President." The actions of the present U.S. administration are thus entirely consonant with Schmitt's doctrine of exception and of the kind of justification that the sovereign can offer for his acts in such cases. Indeed, it would seem to follow that the nature of modernity is to increasingly make all situations exceptional.

Tracy B. Strong

59. *LST* 61/93–94 (also cited by Meier but with a different interpretation).

60. See Harold Relyea, "Terrorist Attacks and National Emergencies Act Declarations," for the *Congressional Research Service*, Library of Congress (RS21017), January 7, 2005.

61. The White House, "Press Conference of the President," news release, December 19, 2005, http://www.whitehouse.gov/news/releases/2005/12/20051219-2.html.

Foreword

The translation of Carl Schmitt's *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Symbol* (1938) is a result of a year-long tutorial that I held at the Graduate Center of the City University of New York. The student, Dr. Erna Hilfstein, a noted historian of science, was intrigued by Carl Schmitt and offered to prepare a first draft of Schmitt's study as well as of his article titled "The State As Mechanism in Hobbes and Descartes" (1937), which appears here as an appendix. Over a number of years I relied on Dr. Hilfstein's familiarity with the sources as well as on her expertise with the computer to check and recheck footnotes and to prepare a number of drafts of both translations. In addition to thanking Dr. Hilfstein, I wish to express my gratitude to my former assistant at the Graduate Center, Ms. Edwina McMahon, for her editorial assistance. Of course, the sole responsibility for the translation rests upon me. For grants awarded, which enabled me to visit a number of archives in Germany, I express my gratitude to the Earhart Foundation, to the Research Foundation of the City University of New York, and to the CUNY Conference of History and Politics. For the help extended to me while working at the Hauptstaatsarchiv at Düsseldorf I also wish to acknowledge Ms. Ingeborg Villinger who was then in charge of the Carl Schmitt documentation housed there.

GEORGE SCHWAB

Introduction

The 1938 study by Carl Schmitt (1888–1985) titled *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*[1] can be approached from numerous perspectives, including (1) Hobbes' political philosophy, (2) the angle of the rapidly developing Nazi one-party state, (3) the viewpoint of Hobbes' relevance to Schmitt, and (4) Schmitt's own theory of the state which is largely derived from his writings and lectures on constitutional law and legal theory. To apprehend Schmitt's theory at a critical juncture of his life, we need to look at numerous aspects because they eventually blended into one another.

I

The thesis advanced here is one shared by Schmitt scholars, namely, that 1936 constitutes a watershed for Schmitt.[2] That divide was caused by the vitriolic attacks on him in the SS organ *Das Schwarze Korps* in December 1936.[3] Because of the nature of the attack launched in the context of the rapidly emerging totalitarian one-party SS state, Schmitt "left" the Nazi legal organizations that he had joined in 1933[4] and confined his activities to those primarily associated with a university career: teaching and writing. But instead of continuing to focus on ideas pertaining to constitutional and legal theory and on germane domestic issues, ideas for which he had been criticized by Nazi theorists from almost the time Hitler had come to power,[5] he shifted to a new center of gravity. After completing his works on Hobbes,[6] Schmitt

turned to international law and international relations, a domain that he thought would leave him out of the limelight.

Though never in the center of power, Schmitt was affected by his "forced" withdrawal from public life. It marginalized him by separating him from the little power that he had enjoyed. Furthermore, the onslaught caused him to fear for his safety. Because of what had recently transpired, it appears to have been no accident that he turned to Hobbes again, for it was Hobbes, as Schmitt repeatedly pointed out, who based his theory of the state on "the mutual relation between Protection and Obedience,"[7] a correlation that assumed special meaning for Schmitt.

What is argued is that Schmitt used his writings on Hobbes to provide an assessment of and a response to emerging political realities. Stated succinctly, because of the Nazi hierarchy's failure to heed his advice on the necessity of forging the new Germany into a qualitative total polity, Schmitt insinuated the demise of the Third Reich. Moreover, as the new polity was degenerating into a quantitative total one-party SS state, one that made a mockery of Hobbes' relation between protection and obedience, Schmitt, disillusioned and frightened, signaled in his writing on the *Leviathan* that he was reconnecting himself to the pre-1933 Schmitt. The bridge to his past was his "Starker Staat und gesunde Wirtschaft" ("Strong State and Sound Economy"), which appeared in print in January 1933, only days before President Hindenburg appointed Hitler chancellor of Germany. In it he contrasted two types of state.[8]

The fundamental difference between the two, he argued, centered on the ability to distinguish the political sphere—that is, the state—from the nonpolitical domain—that is, society. Whereas the qualitative total state in Schmitt's construct is above society and thus in possession of the monopoly of the political, which enables it to distinguish friend from enemy, the quantitative total state is forced by society to "immerse itself indiscriminately into every realm, into every sphere of human existence. [It] altogether knows absolutely no domain that is free of state interference because it no longer is able to distinguish anything."[9] The confusion that this engenders and the multiplicity of societal forces that en-

deavor to wrest the powers of the state have robbed the state of its ability to distinguish friend from enemy. Schmitt observes that this kind of state acts like a state only momentarily, in the form of knee-jerk reactions.[10]

How did the erosion of the boundaries between state and society come about, asks Schmitt? Although the process antedates the twentieth century,[11] the form it assumed in Weimar Germany, where there was basically no consensus about the republican form of polity, a "multiplicity of total parties"[12] matured that totally embraced their members and instilled in them what they considered to be "the correct views, the correct weltanschauung, the correct form of state, the correct economic system," and so on. Outright competition among such a multitude of ideologically antagonistic total parties succeeded "by way of parliament" in splintering the polity—that is, the government of the state made "the state the object of their compromises." Hence "between the state and its government at one pole and the mass of citizens at the other pole, a thoroughly organized multi-party system has inserted itself and is today in possession of the monopoly of politics."[13]

In the face of this development, Schmitt asked himself in 1932: Could the situation still be turned around? More precisely: Could the Weimar state still be saved? Speaking, as he had so often, of the ills of this state, Schmitt argued that it was not too late to rescue it. After all, he argued, the two pillars of state, the bureaucracy and the army, were still in place, as was the president who had at his disposal far-reaching constitutional powers.

What Schmitt had in mind was the Weimar constitution's state of exception clause, Article 48, which enabled the president to make a determination that dangers threatened the republic and to act accordingly. Dismissing as irrelevant the "campaign against this article,"[14] because it purportedly gave the president too much power, Schmitt argued in favor of a broad or latitudinarian interpretation that would enable him to act effectively in defense of the state.[15] He even went so far as to state, in 1932, that unless his plea were listened to, the "truth would avenge itself."[16]

In the triad of presidency, bureaucracy, and army, Schmitt applauded the loyalty and power of the *Reichswehr* for having withstood politicization.[17] To him this was proof "that impartiality and loyalty to the state . . . [are] still possible"[18] and must be demonstrated by the civil service. Because "legality" is the modern bureaucracy's "mode of operation," permitting civil servants to engage in political activities must necessarily lead to a conflict of interest, thereby endangering the continuation of dispassionate service to the country. The sorry situation that had arisen in Germany had not come about as a result of "ill will," he argued, but because of "lack of knowledge and understanding" and was therefore reparable.[19]

To prevent the societal sphere from becoming a political battleground, with all that that implied, including, in the most extreme case, civil war, Schmitt insisted on the depoliticization of society; that is, the state must prohibit politically centrifugal forces from operating within its domain.[20] Arguing that it would be the height of stupidity to hand over to one's adversaries the means by which they could challenge the state's monopoly of political power, Schmitt advocated state control of emerging technical means that facilitated the manipulation of the masses and the formation of public opinion, especially radio and film but not the press, which he considered dated as an instrument of mass suggestion.[21] Following this line of argument, it was only logical for him to propose in 1932 the banning of political parties that considered liberal democratic rules of the game as nothing more than tactical devices to be exploited to gain power legally and once in power to deny the same right to other parties.[22]

To strengthen the state and neutralize political forces that impede its functioning, Schmitt proposed abandoning the traditional distinction between the state and society in favor of a triple construction according to which the state is designated as the political part, the public sphere as neither strictly political nor strictly private, and society as the nonpolitical part.[23] (But drawing those kinds of distinctions raised the question of constitutional revisions. Though not against changes, Schmitt believed that the immediate crisis that

faced Weimar had to be addressed first.) In Schmitt's triple construction, the public domain was reminiscent of an idea that he had touched on in 1928[24] and developed in 1934.[25] It centered on the creation of a second, or upper, house in which organized interests such as industry and agriculture as well as the professions and vocational groups would be represented. In its 1932 form as envisioned by Schmitt, this body would not supersede the lower house of the liberal parliament but would complement it. Unlike a constitutional state that consists of a liberal parliament that is governed by the 51 percent rule, "a strong state would be in a position to endow the second house with the prestige and authority necessary for the men . . . to be freed from the allegiance to their interests and would dare . . . to subject themselves to a consensual decision without the fear of being chased out by their discontented bosses."[26] In short, in the second house particular interests would be aired but resolved in the context of the greater good.

II

Schmitt entered the Third Reich as a marked man: a Catholic who asserted that "with each change of the political situation all principles seem to change with the exception of one, the power of Catholicism";[27] an anti-Nazi who toiled to prevent Hitler from acquiring power; a friend and teacher of Marxists and Jews who dedicated his major oeuvre on constitutional law, *Die Verfassungslehre*, to his Jewish friend Fritz Eisler; an antiracist who wrote at the height of World War I that "The whole romanticism of race teaching rests on similar, namely, morphological, speculations, and persons who like to call themselves *Realpolitiker* make natural scientific, presumably exact race, differentiations valid, but basically they mean moral significances only"[28] and; a man who was twice married to Slavs.

As he confronted the new political reality, this marked man faced a quandary. By staying out of the limelight Schmitt could at most hope to retain his university position. But the unexpected

happened. In April 1933 he was invited to join a commission whose purpose was to draft a law empowering Hitler to appoint commissioners to oversee state governments, and in July he was asked by Göring to join the Prussian State Council, an advisory upper house of sorts.

He interpreted these developments to mean that the past had become no hindrance to active participation in the future. In the face of these developments, he became convinced, he told me, that because of the reputation he enjoyed in Germany and abroad, the new regime had decided to display him as its man, enabling him, in the process, to translate his ideas into practice and help to forge the Third Reich into a meaningful state, a qualitative total state.

Laboring under this impression, Schmitt felt it only right to signal his acceptance of the Third Reich by joining the Nazi party on May 1, 1933. He rationalized his decision on the basis of President Hindenburg's appointment of Hitler as chancellor of Germany on January 30, 1933. To Schmitt, Hindenburg symbolized the state, and his presence, Schmitt thought, would preclude the Nazis from embarking on a course of political adventurism. Moreover, Schmitt was convinced that the communist menace in Germany was real, and he was sure that the Reichstag fire of February 27, 1933, was communist engineered. In the face of what happened since Hindenburg's appointment of Hitler, Schmitt expressed no hesitation in subscribing to the unprecedented Enabling Act passed by the Reichstag on March 24, 1933, which empowered the Reich government to pass Reich laws. To him this act signified that Germany had broken with the constitutional legacy of Weimar,[29] a thesis that contradicted the Nazi notion of continuity.

Intoxicated by what he believed to be the recognition of his own importance and convinced that he was finally in a position to make a difference, Schmitt either became oblivious to what was unfolding or he deceived himself. His failure to apprehend or acknowledge the dynamism of nazism—that is, the speed with which it was enveloping and dominating state and society—led

him to misjudge his own situation. The title of his first major publication in the Third Reich, the 1933 essay *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit (State, Movement, People: The Triple Foundation of the Political Unit)*, is telling. In positing state above movement, Schmitt showed that he was still consistent with his pre-1932 thinking, but in asserting that the leaders of the state are also the leaders of the movement, Schmitt muddled the question of who possesses the monopoly of the political—who distinguishes friend from enemy—when he declared that the political emanated from the movement rather than from the state.[30] In *The Concept of the Political*, Schmitt lucidly put the issue in the following terms: "To the state as an essentially political entity belongs the *jus belli*, that is, the real possibility of deciding in a concrete situation upon the enemy and the ability to fight him with the power emanating from the entity. . . . The state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing of the lives of men. The *jus belli* contains such a disposition. It suggests a double possibility: the right to demand from its own members the readiness to die and unhesitatingly to kill enemies."[31] But consistent with the thesis he advanced in "Strong State and Sound Economy" in 1932, Schmitt, in *State, Movement, People*, relegated the people to the nonpolitical societal realm in which they can realize themselves: "under the protection and shadow of political decisions."[32] As I pointed out elsewhere, he was attacked on both accounts by Nazi theorists, who clearly denied the primacy of the state in favor of the movement and considered the people to constitute the primeval force of the one-party state.[33]

Criticisms and compromises, and muddled thinking regarding state and movement notwithstanding, Schmitt's commitment to the supremacy of the state resurfaced in January 1934, when he spoke on the *Structure of the State and the Collapse of the Second Reich* (which was published in May).[34] By pointing out the *Reichswehr*'s status as the pillar of state and by making no mention of Hitler's political brown shirt army, which by then claimed more than two million men and was headed by Röhm, Schmitt re-

vealed that he could not throw overboard the thinking to which he had been committed for so long. Hitler's purge of the SA in June was for Schmitt an affirmation that his thinking was correct and that Hitler understood that a true state could not tolerate a militantly ideological armed force of Röhm's ilk. In the confrontation between Hitler and Röhm, which culminated in the emasculation of the SA, the 300,000-strong *Reichswehr* appeared victorious.[35]

Although there is no doubt that Schmitt had developed much admiration for Hitler's decisiveness, he reiterated his judgment that leadership must not be tyrannical or arbitrary but should be based on honesty, equality, and mutual loyalty between the leader and the led.[36] Convinced that Germany would have been threatened by civil conflict if Röhm's SA had not been curbed, Schmitt justified Hitler's actions against the SA leader and his entourage. But during "the Night of the Long Knives" murders were committed that had no connection with the action taken against the SA, deeds that Hitler admitted in his Reichstag speech of July 13, 1934. Because of the regime's failure to punish the culprits, Schmitt called attention to the excesses that had taken place and reminded Hitler that the "Führer protects the law from the worst abuse when he, in the moment of danger, . . . as the highest judge, produces immediate justice."[37]

Shortly after Schmitt published *The Structure of the State and the Collapse of the Second Reich*, another work, titled *On the Three Types of Juristic Thought* appeared.[38] In it, Schmitt developed a thesis that he had touched on in 1928 and, as noted, expanded in 1932. It provided for a legal order based on institutions or orders to which individuals would belong depending on each one's professional, business, or political career. What it amounted to was the creation of a second source of legitimacy. Because each order was to be governed by norms derived from or applicable to particular institutions, encroachments by the leader would become more complicated and problematic. But, Schmitt added, this type of legal order could not be understood outside the context of national socialism, which not only rejected the maladies of liberal society but also was governed by the leadership principle.[39] Never-

theless, by postulating a grassroots form of political legitimacy, Schmitt implicitly expressed his reservation about one-man rule and his apparent belief that a legal order based on institutional justice had a greater chance of surviving upheavals than other political systems do.

III

Notwithstanding his general commitment to the new regime, Schmitt's past finally began to bear heavily on his situation. Powerful colleagues wished him ill, as did former friends and colleagues who lived abroad. The SS Security Service's (SD)–dossier on Schmitt, including the parts dealing with the incriminating material that Waldemar Gurian, among others, disseminated in Germany from abroad,[40] material that was used against Schmitt in the SS attacks in 1936, makes for breathless reading.

Alarmed by a polity that neither appreciated his contributions nor cared about anybody's safety, Schmitt was propelled to make an all-out attempt to allay official doubts about his trustworthiness. His effort, as we all know, was undertaken at the expense of Jews.[41] But it did not help. Nor would it have helped had he embraced the biological Nazi version of anti-Semitism rather than the traditional Christian form. His past was too compromised. It stood in his way. Thus the conference of jurists, on "Judaism in Jurisprudence," that Schmitt planned for October 1936 to expunge Jewish influence from jurisprudence came to naught because, as the SD–dossier shows, the regime considered the issue no longer relevant in the Third Reich. The SD considered the conference a clever ploy by a tricky Schmitt to deflect attention from his political catholicism.[42]

The attacks by *Das Schwarze Korps*, which characterized Schmitt an opportunist, warned him to cease parading as a Nazi, and reminded him of the proverb "The Lord protect me from the consequences of my actions."[43] It had a sobering impact on him. Schmitt finally began to understand the implications of what he

had written in the safety of his study. In his highly provocative essay titled *The Concept of the Political*, he focused attention on Hobbes' central concern—namely, his protection-obedience axiom, which, with modifications, Schmitt made his own.

> On this principle rests the feudal order and the relation of lord and vassal, leader and led, patron and clients. . . . No form of order, no reasonable legitimacy or legality can exist without protection and obedience. The *protego ergo obligo* is the *cogito ergo sum* of the state. A political theory which does not systematically become aware of this sentence remains an inadequate fragment. Hobbes designated this (at the end of his English edition of 1651, p. 396) as the true purpose of his *Leviathan*, to instill in man once again "the mutual relation between Protection and Obedience;" human nature as well as divine right demands its inviolable observation.[44]

As he drew parallels between his situation after the attacks and Hobbes' experiences "in the terrible times of civil war," when "all legitimate and normative illusions with which men like to deceive themselves regarding political realities in periods of untroubled security vanish,"[45] Schmitt, as John McCormick concluded correctly, "must have come to understand that Weimar, for all his criticisms of it, was certainly better than National Socialism. There, whatever the social disturbances and economic fluctuations, Schmitt's academic controversies did not cause him to fear for his life."[46]

In light of recent events, it was not surprising for Schmitt to have returned to Hobbes' axiom. But now he looked at it not in general terms but from the depth of his anguished heart. Referring to Hobbes but obviously alluding to the Germany of his day, Schmitt noted in 1938 that "if protection ceases the state too ceases and every obligation to obey ceases." "The individual then wins back his 'natural' freedom. The 'relation between protection and obedience' is the cardinal point of Hobbes' construction of

state" (Chapter VI). In the same context he notes "that it would . . . be a peculiar philosophy of state, if its entire chain of thought consisted only of propelling the poor human beings from the utter fear of the state of nature only into the similarly total fear of a dominion by a Moloch or by a Golem."

After assessing the relationship between protection and obedience and concluding that it was tilted in favor of obedience at the expense of protection, he observed that "The state . . . guarantees me the security of my physical existence [and] in return it demands unconditional obedience. . . . All further discussions lead to a 'pre-political' condition of insecurity, where ultimately one can no longer be certain of one's physical security . . ." (Chapter IV).[47] Based on his realization that the protection factor in Hobbes' equation was rapidly eroding in Nazi Germany, did Schmitt advocate active resistance to the legally constituted authority? He spoke of passive resistance in the sense of a "soul of a people" betaking "itself on the 'secret road' that leads inward. Then grows the counterforce of silence and stillness" (Chapter V).[48] When a public power succeeds in alienating its people and driving them inward, Schmitt continues, that public power "may be ever so completely and emphatically recognized and ever so loyally respected, but only as a public and only an external power it is hollow and already dead from within" (Chapter V).

It was also in the context of the rapidly emerging one-party SS state that Schmitt finally understood and hence appreciated Hobbes' individualism, leading him to ridicule those who over the centuries regarded Hobbes "as the notorious representative of the absolute 'power state'" and interpreted "the image of the leviathan . . . to be a horrible Golem or Moloch." Schmitt concluded that Hobbes' state theory still serves "today as a prototype of all that western democracy perceives to be a polemical horror picture of a 'totalitarian' state and of 'totalism.' The specific law-state elements of Hobbes' theory of state and jurisprudence were almost always misjudged" (Chapter VI).

If there was no doubt in Schmitt's mind that Hobbes was an individualist and a "spiritual forefather of the bourgeois law-and-

constitutional state or, as Ferdinand Tönnies put it, a 'theorist of the positive constitutional state,'" (Chapter VI) what went wrong with Hobbes' state theory, according to Schmitt? His answer: Hobbes undermined the tight coherence in which sovereign power forged "the unity of religion and politics." Schmitt says, "at the zenith of the sovereign power that brings about the unity of religion and politics appears the rupture of the otherwise so complete, so overpowering unity. Here, where the matter concerns miracle and belief, Hobbes evades the decisive point. Concerning the question of the belief in miracles he makes his own non-eradicable invidualistic proviso in a way that renders any discussion as to whether Hobbes was really an 'individualist' superfluous for our consideration. At this point enters the differentiation between inner faith and outer confession into the political system of the *Leviathan*." By declaring the question of "wonder and miracle to be a matter of 'public' in contrast to 'private' reason . . . on the basis of universal freedom of thought . . . he," according to Schmitt, "leaves it to the individual's private reason whether to believe or not to believe and to preserve his own *judicium* in his heart. . . . But as soon as it comes to public confession of faith, private judgment ceases and the sovereign decides about the true and the false" (Chapter V).

What Schmitt condemned was not Hobbes' distinction between inner and outer because for Hobbes, according to Schmitt, "public peace and the right of sovereign power" were always "in the forefront" in his thinking and "individual freedom of thought" "only . . . a proviso in the background." What galled Schmitt was that in the course of several centuries the crack that Hobbes brought about resulted in "individual freedom of thought" becoming "the form-giving principle and the necessities of public peace as well as the right of the sovereign power" were "transformed into mere provisos" (Chapter V).

Although Schmitt blamed the Jews Spinoza, Mendelssohn, and Friedrich Julius Stahl-Jolson for exploiting and turning Hobbes' "barely visible crack" (Chapter VI) into a fissure, in 1938 he neutralized the venom that he had reserved for Jews at the notorious

October 1936 conference.[49] He broadened his attack by pointing out that disparate forces such as the "Roman papal church," the "power-thirsty Presbyterian churches or sects" (Chapter I), Kant (Chapter IV), Goethe, "secret societies and secret orders, Rosicrucians, freemasons, illuminates, mystics, and pietists, all kinds of sectarians, [and] the many 'silent ones in the land'" coalesced to bring about the emasculation of the state and of sovereign power (Chapter V). What Schmitt had hoped to accomplish for the new Germany was not to turn back the clock and eliminate Hobbes' gap. In his Germany there was no room for the state to militantly impose its ideology on society and risk alienating the people, thereby weakening the state's ability to guard the polity from internal and external threats. In a work that is remarkably free of Nazi jargon, a characteristic that is true of his 1937 essay on "Hobbes and Descartes"[50] as well, the conclusion that must be drawn is that Schmitt's commitment to the qualitative total state was still secure.

Since it was published, Schmitt's 1938 study of Hobbes has been variously interpreted. For example, at one extreme, the work was condemned because it bears the signature of Schmitt. A centrist position was articulated by the late Helmut Rumpf, who argued that because Schmitt's formulations can be interpreted as a critique of the totalitarian system as well as "a totalitarian critique of Hobbes," it is difficult to conclude where Schmitt actually stood.[51] At the other extreme is the view expressed by Helmut Schelsky, who characterized Schmitt as a "traditional bourgeois liberal" who opted for a strong state in order to protect life and property.[52]

A contextual reading of Schmitt leads to a conclusion that would fit somewhere between Rumpf's and Schelsky's. Carl Schmitt was undoubtedly closer to an authoritarian form of bourgeois liberalism than to Hitlerian Nazism. The Schmitt whose writings were published in 1938 is more Weimar individualist than Nazi communitarian, more praising of Hobbes as a father of a strong liberal state than as one who formulated a jus-

tification for the emergence of the Hitlerian one-party state.[53] It is true that Schmitt's conception of the qualitative total state obligated citizens to obey the legally constituted authority, but their obedience was predicated on their being provided with security by the state. As Schmitt finally learned in 1936, because security did not prevail in National Socialist Germany, where the totalitarian party's all-embracing ideology was being militantly imposed on an entire people, Schmitt was not guilty of the charge that he was a Hitlerian Nazi because he had no use for a polity that offered no protection. Similarly, the charge of anti-Semitism cannot be sustained. Schmitt's relapse into a narrow, exclusionary theology, although it overlapped with Nazi anti-Semitism and, as such, added to the poisoned atmosphere, lacked the cornerstone of Nazi ideology, a hodge-podge theory of race. What remains of Schmitt's state theory is not totalitarian in nature but authoritarian in form and content, a theory that he developed before Hitler's conquest of power. At the helm of the power apparatus of Schmitt's state stood a sovereign. With the help of the other pillars of state, the army and the bureaucracy, the sovereign was responsible for ensuring domestic order and tranquility so that citizens could live their lives free from fear of physical harm. As it discharged its responsibilities the state could not risk its strength being sapped by a politicized society challenging its monopoly of the political, for the state had to marshal its energies and resources to ensure its territorial integrity. Toward that end, Schmitt, unlike Hobbes, argued that in a state of war the state had "the right to demand from its own members the readiness to die."[54]

Although Schmitt's 1938 study does not on the whole contradict his pre-1933 conception of the qualitative total state as far as society is concerned in the context of a strong state, under the immediate impression of nazism, it appears to me, a qualitative change took place in one critical instance. Whereas on the eve of Hitler's acquisition of power Schmitt favored the creation of an upper house in which organized interests would be represented, he did not see the upper house supplanting the liberal parliament

(see above, Section I). In contrast, Schmitt's 1934 work on concrete orders or institutions (see above, Section II), gives the unmistakable impression that a liberal parliament reminiscent of the Weimar period, one in which political parties and movements challenged the state's monopoly of the political, would be counterproductive for a German qualitative total state and thus unacceptable.

George Schwab

NOTES

1. (Hamburg: Hanseatische Verlagsanstalt, 1938). A second printing appeared in 1982 in Köln: Hohenheim Verlag.

2. George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt Between 1921 and 1936,* 2nd ed. (New York & London: Greenwood Press, 1989), pp. 141–43, 146–50; Joseph W. Bendersky, *Carl Schmitt, Theorist for the Reich* (Princeton: Princeton University Press, 1983), pp. 235–43.

3. See in particular "Es wird immer noch peinlicher," December 10, 1936, p. 2; also, George Schwab, "Carl Schmitt: Political Opportunist?" *Intellect*, vol. 103, no. 2363 (February 1975), pp. 334–37. On the specifically anti-Catholic thrust in the attacks on Schmitt, see the fifteen-page confidential *Amt Rosenberg* report of January 8, 1937. The head of this organization (*Dienststelle des Beauftragten des Führers für die Überwachung der gesamten geistigen und weltanschaulichen Schulung und Erziehung der NSDAP*) was Alfred Rosenberg. This report is part of the extensive security police dossier on Schmitt in, among other archives, the Hauptarchiv Düsseldorf. (For an inventory of this archive, see *Nachlass Carl Schmitt*, ed. Dirk van Laak and Ingeborg Villinger [Siegburg: Respublica-Verlag, 1993].) This report was also reprinted and commented on by Günter Maschke under the title "Das 'Amt Rosenberg' gegen Carl Schmitt: Ein

Dokument aus dem Jahr 1937," in *Zweite Etappe*, Bonn, October 1988, pp. 96–111.

4. Bendersky, *Carl Schmitt*, pp. 236–40, and Schwab, *The Challenge*, pp. 17, 141.

5. Schwab, *The Challenge*, pp. 112–13.

6. Prior to publishing his work on Hobbes in 1938, Schmitt published an article in 1937 titled "Der Staat als Mechanismus bei-Hobbes und Descartes," *Archiv für Rechts–und Sozialpolitik*, vol. 30, no. 4, pp. 622–32. Because Schmitt anticipates here his 1938 work, this article appears in this translation as an appendix. Indispensable to Schmitt studies are the bibliographical works by Piet Tommissen: "Schmittiana I, II, III. Berichtigungen und Ergänzungen," *Schmittiana, Beiträge zu Leben und Werk Carl Schmitts* (Berlin: Duncker & Humblot, 1994), vol. IV, pp. 291–304; "Berichtigungen und Ergänzungen," *Schmittiana,* 1, 2nd ed. (1988), pp. 131–34; "Zweite Fortsetzungsliste der C. S.–Bibliographie vom Jahre 1959," *Revue européenne des sciences sociales: Cahiers Vilfredo Pareto (Miroir de Carl Schmitt).* Tome XVI (1978), pp. 187–238; "Ergänzungsliste zur Carl-Schmitt-Bibliographie vom Jahre 1959," *Epirrhosis: Festgabe für Carl Schmitt*, ed. Hans Barion et al. (Berlin: Duncker & Humblot, 1968), vol. II, pp. 739–78; "Carl-Schmitt-Bibliographie," *Festschrift für Carl Schmitt*, ed. Hans Barion et al. (Berlin: Duncker & Humblot, 1959), pp. 273–330.

7. See, for example, Carl Schmitt, *The Concept of the Political*, translation, introduction and notes by George Schwab. With comments on Schmitt's essay by Leo Strauss (New Brunswick, N.J.: Rutgers University Press, 1976), p. 52. (My 1976 translation of the Schmitt text with a new foreword by Tracy B. Strong and a new translation of Strauss' "Comments" was released by The University of Chicago Press in March 1996.)

8. *Volk und Staat*, Heft 2, 1933, pp. 81–94; also, Carl Schmitt, *Der Hüter der Verfassung*, 3rd printing (Berlin: Duncker & Humblot, 1985), pp. 79–84; and Carl Schmitt, "Staatsethik und pluralistischer Staat" (1930), *Positionen und Begriffe im Kampf mit*

Weimar—Genf—Versailles 1923–1939, 2nd printing (Berlin: Duncker & Humblot, 1988), pp. 132–45.

9. Schmitt, "Starker Staat und gesunde Wirtschaft," p. 84.

10. Ibid., p. 91. For discussions of Schmitt's qualitative total state see John Keane, *Democracy and Civil Society: On the Predicaments of European Socialism, the Prospects for Democracy, and the Problem of Controlling Social and Political Power* (London & New York: Verso, 1988), pp. 159–63; and, Günther Maschke, "Zum 'Leviathan' von Carl Schmitt," in *Carl Schmitt, Der Leviathan in der Staatslehre des Thomas Hobbes* (Köln: Hohenheim Verlag, 1982), pp. 227–42.

11. See Schmitt, *The Concept of the Political*, pp. 24–25 passim, and Schwab's introduction, pp. 12–13; Carl Schmitt, "Die Wendung zum totalen Staat" (1931), *Positionen und Begriffe*, pp. 146–57; and Carl Schmitt, *Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1930), pp. 8–17.

12. Schmitt, "Starker Staat," p. 84.

13. Ibid., p. 85. On the monopoly of the political and on Schmitt's definition of the political in the sense of a criterion, namely, the distinction between friend and enemy, see his *The Concept of the Political*, pp. 26ff.; Paul Edward Gottfried, *Carl Schmitt: Politics and Theory* (New York & London: Greenwood Press, 1990), ch. 4 passim; George Schwab, "Enemy or Foe: A Conflict of Modern Politics," and G. L. Ulmen, "Return of the Foe," *Telos*, no. 72 (Summer 1987), 194–201 and 189–93 respectively.

14. "Starker Staat," p. 88. This topic is amply treated by Schwab in *The Challenge*, pp. 29–43, 97–100, and by Bendersky, *Carl Schmitt*, pp. 73–84, 122–26, 185–86.

15. "Starker Staat," p. 87.

16. Carl Schmitt, *Legalität und Legitimität*, 4th printing (Berlin: Duncker & Humblot, 1988), p. 98.

17. "Starker Staat," p. 87.

18. Ibid., p. 88.

19. Ibid., pp. 87, 93.

20. Schmitt, *Legalität und Legitimität*, pp. 30–40, 50.

21. Ibid.; "Starker Staat," pp. 83–84. On Schmitt's distinction between "technology," "the technical," and "technicity," see the 1994 University of Chicago Ph.D. dissertation by John P. McCormick titled *Against Politics as Technology: Carl Schmitt's Critique of Liberalism*, pp. 20–21, 29–37 passim.

22. Schmitt, *Legalität und Legitimität*, pp. 36–38 passim.

23. "Starker Staat," pp. 89–90.

24. Carl Schmitt, *Verfassungslehre*, 8th printing (Berlin: Duncker & Humblot, 1993), pp. 170–74; also, "Freiheitsrechte und institutionelle Garantien der Reichsverfassung" (1931), *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954. Materialien zu einer Verfassungslehre*, 3rd printing (Berlin: Duncker & Humblot, 1985), pp. 140–73.

25. Carl Schmitt, *Über die drei Arten des Rechtswissenschaftlichen Denkens*, 2nd printing (Berlin: Duncker & Humblot, 1993), passim.

26. "Starker Staat," p. 92.

27. *Römischer Katholizismus und politische Form* (Hellerau: Jakob Hegner, 1923; Munich: Theatiner Verlag, 1925), p. 14. An authorized English translation by Gary L. Ulmen under the title *German Catholicism and Political Form* will be published by Greenwood Press in 1996.

28. Carl Schmitt, *Theodor Däublers "Nordlicht": drei Studien über die Elemente, den Geist und die Aktualität des Werkes*, 2nd printing (Berlin: Duncker & Humblot, 1991), p. 14. See also Helmut Quaritsch, *Positionen und Begriffe Carl Schmitts*, 2nd revised ed. (Berlin: Duncker & Humblot, 1991), pp. 84–88.

29. *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit*, 3rd printing (Hamburg: Hanseatische Verlagsanstalt, 1935), p. 7.

30. Ibid., pp. 12–13, 15. On Schmitt's conclusion, see also G. L. Ulmen's *Politischer Mehrwert, Eine Studie über Max Weber und Carl Schmitt* (Weinheim: VCH, Acta Humaniora, 1991), pp. 335–36 passim.

31. Schmitt, *The Concept of the Political,* p. 46.

32. *Staat, Bewegung, Volk*, p. 12.

33. Schwab, *The Challenge*, pp. 112–14.

34. *Staatsgefüge und Zusammenbruch des zweiten Reiches* (Hamburg: Hanseatische Verlagsanstalt, 1934).

35. But what Schmitt and most others failed to realize was that the Reichswehr's victory was a mirage. The true victor that emerged was the SS. Schmitt was thus appalled to learn after the war that his loyalty to the regime was being questioned as early as 1935, when his name came up with Himmler and Göring in connection with a purported army putsch that Schmitt was supposed to have justified on legal grounds. Friedrich Hossbach, *Zwischen Wehrmacht und Hitler 1934–1938* (Wolfenbüttel: Wolfenbütteler Verlagsanstalt, 1949), pp. 70, 71, 36.

36. Schmitt, *Staat, Bewegung, Volk*, pp. 41–42.

37. Carl Schmitt, "Der Führer schützt das Recht" (1934), in *Positionen und Begriffe*, pp. 200, 202.

38. *Über die drei Arten des Rechtswissenschaftlichen Denkens.*

39. Ibid., pp. 63–64; see also, Schwab, *The Challenge*, pp. 120–25.

40. See *Deutsche Briefe 1934–1938: Ein Blatt der katholischen Emigration*, 2 vols., ed. Heinz Hürten (Mainz: Matthias-Grunewald-Verlag, 1969); also, Dirk van Laak, *Gespräche in der Sicherheit des Schweigens, Carl Schmitt in der politischen Geistesgeschichte der frühen Bundesrepublik* (Berlin: Akademie Verlag, 1993), pp. 28–30.

41. Echoing earlier research by Bendersky and me, Bernd Rüthers is correct in observing that until late 1935 Schmitt concerned himself only incidentally with the Jewish question. *Carl Schmitt im Dritten Reich*, 2nd ed. (Munich: C. H. Beck, 1990), p. 96. See also George Schwab's "Carl Schmitt Hysteria in the United States: The Case of Bill Scheuerman," in *Politische Lageanalyse: Festschrift für Hans-Joachim Arndt zum 70. Geburtstag*, ed. Volker Beismann and Markus Klein (Bruchsal: San Casciano Verlag, 1993), pp. 297–98. An edited version of this article appeared in the spring 1992 issue of *Telos*, no. 91, 99–107.

42. See above, note 3; also in the SD–dossier, see the detailed report of December 15, 1936, on Schmitt's development. Although fully acquainted with the SD–file on Schmitt, Raphael Gross ("Politische Polykratie, Die legendenumwobene SD-Akte Carl Schmitts," in *Tel Aviver Jahrbuch für deutsche Geschichte*, vol. XXIII [1994], pp. 115–43), nevertheless, concludes that the attacks must be construed as little more than a mere warning to Schmitt "not to go further than he had already gone." This conclusion fails to appreciate fully the situation in Germany at the time nor Schmitt's perception of the seriousness of the attacks.

43. "Es wird immer noch peinlicher."

44. Schmitt, *The Concept of the Political*, p. 52. On Schmitt's interpretation of Hobbes' protection-obedience axiom, see John P. McCormick, "Fear, Technology and the State: Carl Schmitt, Leo Strauss, and the Revival of Hobbes in Weimar and National Socialist Germany," in *Political Theory*, vol. XXII, no. 4 (November 1994), 636–44.

45. Schmitt, *The Concept of the Political*, p. 52.

46. McCormick, "Fear, Technology and the State," p. 642.

47. On Schmitt's obsession with physical security, see his "Ex Captivitate Salus" (1946), in *Ex Captivitate Salus: Erfahrungen der Zeit 1945–47* (Köln: Greven Verlag, 1950), p. 64; also, Schwab, *The Challenge*, pp. 146, 148.

48. This is obviously an allusion to Herman Melville's *Benito Cereno*. Immediately after World War II Schmitt returned to the so-called inward migration and spoke of Benito Cereno as having become a symbol of the predicament of an individual in a mass totalitarian system. See his "Antwortende Bemerkungen zu einem Rundfunkvortrag von Karl Mannheim," in *Ex Captivitate Salus*, pp. 21–23. See also Maschke, "Zum 'Leviathan' von Carl Schmitt," pp. 204–5.

49. Although Schmitt did not abandon his anti-Jewish posture entirely after 1936, in the collection of his selected works embracing the period 1923-1939, which he had reprinted in 1940 (*Positionen und Begriffe*), Schmitt did not delete the complimentary references that he had made to Jews. An anti-Jewish at-

titude lingered on into the immediate postwar period. This antipathy, however, continued to have nothing to do with race. Alluding to Germany, Schmitt said with regard to race that "what is most often spoken of is that which one lacks." As far as he was concerned, the issue of race as understood in Nazi Germany was nothing but a "swindle." Carl Schmitt, *Glossarium: Aufzeichnungen der Jahre 1947–1951*, ed. Eberhard Freiherr von Medem (Berlin: Duncker & Humblot, 1991), pp. 255, 256. The Jewish issue in Schmitt was most recently raised by Raphael Gross, "Carl Schmitt's 'Nomos' und die 'Juden,'" in *Merkur*, Heft 5, May 1993, 410–20. Although the author admits that Schmitt had many Jewish friends and acquaintances before 1933, he seeks to establish an anti-Jewish continuity between the pre-Nazi Schmitt and Schmitt after 1933, even though references to anti-Semitism are lacking. Because, as he admitted, his evidence is circumstantial or "indirect," his thesis has to be treated accordingly. Gross argues that "the successful emancipation of Jews signified" to Schmitt "the destruction of the Christian-theological state" and that the Jewish desire for equal political rights and their reliance on "universalistic, abstract norms and ideals" served their interest, which is the preservation of their traditions (p. 413). He was convinced that postexilic Jews who lacked territory that they could call their own felt safe with liberal constitutional thinking because it "is based on a higher rationality and truth that is obtained from parliamentary debate rather than from authoritarian decisions" toward which Schmitt was inclined because of his Catholic provenience and generally conservative weltanschauung. Hence Schmitt's attacks against the abstract normative thinking in jurisprudence advanced by such prominent Jewish jurists as Laband, Jellinek, Kelsen, Preuss, Stier-Somlo, Nawiasky, and Heller. Schmitt's particular problem with that kind of jurisprudence, which was not rooted in the soil of a particular people, eventually spilled over to Jewry in general, according to Gross (pp. 415, 416 passim). On numerous occasions Schmitt expressed the view to me that the situation of the Jews dramatically changed with the creation of

the state of Israel. "At last they [Jews] again have contact with a soil they can call their own." On cabbalistic interpretations of the leviathan and behemoth that arose in the Middle Ages, as the result of the "totally abnormal condition" of the Jews in Schmitt's view, compare Chapter I.

50. See above, note 6.

51. *Carl Schmitt und Thomas Hobbes, Ideelle Beziehungen und aktuelle Bedeutung, mit einer Abhandlung über: Die Frühschriften Carl Schmitts* (Berlin: Duncker & Humblot, 1972), p. 68.

52. *Politik und Publizität* (Stuttgart: Degerloch, 1983), p. 30.

53. A contrary view is expressed by Stephen Holmes. Considering Schmitt to be probably the most brilliant antiliberal of this century, Holmes suggests that Schmitt, in 1965 in his "Die vollendete Reformation, Bemerkungen und Hinweise zu neuen Leviathan-Interpretationen," in *Der Staat*, vol. 4, no. 1, packaged himself as a liberal individualist of sorts. According to Holmes, Schmitt carried off this sham by, among other means, showing that there was a continuity in his thinking by "skillfully" making his 1938 book on Hobbes "appear harmlessly liberal in spirit." *The Anatomy of Antiliberalism* (Cambridge, Mass., and London: Harvard University Press, 1993), p. 50. A careful reading of the two works translated does not substantiate Holmes' conclusion. On the contrary. The two works translated do not only show continuity between the Schmitt of 1937–38 and the post–World War II Schmitt—with the exception of the years 1933 and 1936 in which Schmitt sank to rock bottom—but also between the pre-1933 Schmitt, that is, the Schmitt of the Weimar period, and the Schmitt of 1937 and 1938. Still by far the best discussion of the liberal framework within which Schmitt critiqued liberalism is Leo Strauss' 1932 "Comments on Carl Schmitt's *The Concept of the Political.*" Recent worthwhile discussions of this topic include John P. McCormick's "Fear, Technology and the State," pp. 636–45; Paul Edward Gottfried's *Carl Schmitt: Politics and Theory,* ch. 3 passim; and Heinrich Meier's *Carl Schmitt, Leo Strauss und "Der Begriff des Politischen," Zu einem Dialog unter Abwesenden* [(Stuttgart: J. B. Metzlersche Verlagsbuchhandlung,

1988); English translation was released by The University of Chicago Press in 1995, see especially sections VI and VII.

54. Carl Schmitt, *The Concept of the Political*, p. 46. For Hobbes, as Leo Strauss points out, "protection of life is the ultimate reason for the state." "Comments on Carl Schmitt's *Der Begriff des Politischen*," ibid., pp. 88–89. My attention has just been drawn to a study by Gershon Weiler titled *From Absolutism to Totalitarianism, Carl Schmitt on Thomas Hobbes* (Durango, Colo.: Hollowbrook Press, 1994). The at times valuable discussions of Schmitt's relationship to Thomas Hobbes notwithstanding, Weiler, nevertheless, subscribes to dated theses, including the belief that despite "changing party affiliations" (p. 20) Schmitt's political theory, which is based on the notion of the *Führerstaat* (p. 3) in which sovereign power is absolute, is remarkably consistent (ibid., and p. x): "This all-encompassing view of sovereignty, i.e., its *totalitarian* interpretation . . . which Schmitt attribute[s] to Hobbes" (p. 15) and makes his own (p. 83 passim).

Translators' Note

As a rule Schmitt's style does not suffer from what is known as professorial German. Nevertheless, it has at times proved difficult to translate his thoughts with clarity and precision. Wherever possible, therefore, the translators have divided long paragraphs and sentences and have shortened some of the latter, without impairing the ideas Schmitt conveys. Whenever possible, the translators have tried to verify the accuracy of Schmitt's notes. Additions to the text or notes have usually been inserted between brackets. Moreover, whenever the translators were able to ascertain and deemed it relevant to include the first name of authors, the complete title of books, and dates of publication, they appear without brackets.

George Schwab and Erna Hilfstein

Introduction

The exposition that follows is a result of two lectures I delivered on 21 January 1938 at the Philosophical Society of Leipzig that was chaired by Professor Arnold Gehlen and on 29 April 1938 at the Hobbes Society of Kiel that was presided over by Professor Baron Cay von Brockdorff. Several thoughts and formulations taken from earlier articles and lectures have been incorporated into this work. The totality represents a report about some results that stem from my occupation with the philosopher from Malmesbury, especially with his *Leviathan*. About this work I can confirm what Diderot said about another work of Hobbes: "c'est un livre à lire et à commenter toute sa vie."

I have endeavored to do scholarly justice to the topic, without fantasy, and simultaneously also without trite analysis, which only leads to making the discussion over the subject superfluous. I am also aware of the danger implicit in the subject. *Stat nominis umbra*. The name *leviathan* throws a long shadow; it has fallen on the work of Thomas Hobbes and will in all likelihood also fall on this little book.

Carl Schmitt
Berlin, 11 July 1938

Overview of Chapters I through VII

I. *Hebrew Bible origin [of the leviathan]; Christian-theological and Jewish-cabbalistic interpretations; meaning and possibilities of a restoration of the symbol by Hobbes.*

II. *The leviathan in Hobbes' work according to textual inquiry and etymology.*

III. *The leviathan is the "mortal God"; at the same time he is a representative-sovereign person and a huge machine.*

IV. *The huge machine terminates in a technically neutral, irresistibly functioning command mechanism.*

V. *The sovereign-representative person dies of the separation of inner from outer.*

VI. *The constitutional state machine breaks on the pluralism of the indirect powers.*

VII. *The symbol fails and does not measure up to the opposite meaning.*

Chapter I

Hobbes has become more famous and notorious because of his *Leviathan* than as a result of all his other works. In fact, to the general public he was summarily known as a "prophet of the leviathan." When Hegel could say that the book named after this animal is "a very disreputable work," the title assuredly contributed to that reputation. No illustration of or quotation about a theory of state has engendered so provocative an image as that of the leviathan; it has become more like a mythical symbol fraught with inscrutable meaning.

In the long history of political theories, a history exceedingly rich in colorful images and symbols, icons and idols, paradigms and phantasms, emblems and allegories, this leviathan is the strongest and most powerful image. It shatters the framework of every conceivable theory or construct. The unity of a political entity was often and in various guises perceived to be a huge person, a μάκρος ἄνθρωπος and *magnum corpus*. The history of political ideas also knows the image of a huge beast. But such images usually remain in the realm of philosophical illustration. The depiction of a commonwealth as a "huge man," which has been traced to Plato, characterizes, for example, a mob stirred by irrational emotions, a multiheaded and "multicolored creature," a ποίκιλον θρέμμα.[1] This evokes an effective image, but by far not the extraordinary mythical power of the leviathan. When Nietzsche characterized the state as "the most callous monster," a depiction that certainly transcends the merely philosophico-intellectual sphere and even lifts it into an "irrational" domain, it was still more in the impressionistic-suggestive style of the nineteenth century than in the mythical sense of a secular image of a battle.

As a symbol of a political entity, the leviathan is, on the other hand, not just any "corpus" or just any kind of beast. It is an image from the Hebrew Bible, one garbed during the course of many centuries in mythical, theological and cabbalistic meanings. In *The Book of Job*, Chapters 40 and 41, it is depicted as the strongest and most tremendous sea monster. Portrayed in vivid detail beside him is a land animal, the behemoth. The mythologico-historical origin of these biblical depictions is a question in itself. They have been associated with some sagas; and in the instance of the leviathan especially, "Tiamat," a divinity of the Babylonian saga of the ancient flood, seems to be recognized. Here we need not be detained by the differing opinions and controversies of theologians and historians[2] of the Hebrew Bible; they do not relate directly to the political myth to which Hobbes refers. Notwithstanding some obscurities and confusion, of significance here is only the fact that the leviathan invariably appears in powerful mythical representations as a huge water animal, as a crocodile or a whale or in general as an enormous fish, whereas behemoth appears as a land animal, for example, a huge bull or an elephant.

Both monsters in *The Book of Job* are frequently fused with other animal forms that are depicted in the Hebrew Bible so that numerous, essentially distinct animal images flow into one another. In the Vulgate as well as in Luther's translation of the Bible the two serpents that God, according to Isaiah 27:1, strikes "with his sore, and great, and strong sword" and thereby slays the "dragon in the sea" are called leviathan. But "leviathan" is also commonly translated as "dragon" and then assumes the meaning of serpent or dragon; both words are often used synonymously. "It is quite possible," says Wolf Baudissin, "that originally the myth distinguished between the four characterizations of dragon: serpent, Liviathan, Rahab, and Tannin; however, the authors of the Hebrew Bible do not show any awareness of that differentiation."[3] It can thus be explained that the leviathan as serpent or dragon changes from an apparition representing a dangerous force to a downright foul fiend. He may just as well symbolize the power of the devil in his various forms of appearance, including Satan him-

self. Like the more "chthonic" behemoth, he comes close to the apocalyptic beasts that appear in *The Revelation of Saint John*: the dragon, the serpent, the "beast from the abyss," the "beast coming from the earth," and the "beast rising from the sea."[4] Also, the myths of the battles against the dragons and all sagas and legends of dragon slayers such as Siegfried, Saint Michael, and Saint George may be traced to the leviathan.

Numerous interpretations and transformations belong to the nature of mythical images; continuous metamorphoses, *in nova mutatae formae*, are in fact sure signs of their vividness and effectiveness. In the instance of the leviathan, the wealth of theological and historical interpretations is simply immense. Just as he can be an all-devouring sea animal (παμφάγον), even of the sea itself, he can also eject its dead during the Last Judgment, according to the interpretation by Ephraim the Syrian and as illustrated in the Byzantine images of Judgment Day.[5] From the teachings of the Mandaeans we learn that at the end of the world the leviathan swallows the universe and all those who have failed to separate themselves from the world.[6] A fourteenth-century drawing by Opicinius de Canistris associates the leviathan with the Mediterranean Sea, the *diabolicum mare*.[7] Notwithstanding the often confusing phantasies of such myths, the leviathan remains linked with the sea. From the chaotic abundance of pictures and visions there emerged finally in the course of the Middle Ages two major categories of interpretations: the Christian symbolization by the church fathers of the early Middle Ages and the Jewish mythologization by the rabbis of the cabbalah.

The interpretation of the leviathan during the Christian Middle Ages was completely governed until the period of scholasticism by theology: because of Christ's death on the cross the devil lost his battle for mankind for, fooled by the servile figure of God hidden in the flesh, he tried to devour the crucified Man-God but was caught by the cross as if by a fishhook. The devil is depicted here as the leviathan, that is, as a huge fish that was lured and caught by God. As a theological doctrine this conception is traceable to

Gregory the Great (Moralia in Job), Leo the Great, and Gregory of Nyssa.[8] The comment by Walafrid Strabo (ninth century) is responsible for transmitting this interpretation to subsequent centuries. The illustrations in medieval books depict the leviathan, the "huge whale," only in connection with this patristic interpretation. In this way it is also depicted in the splendid drawing in the *Hortus deliciarum* of the Abbess Herrad of Landsberg (twelfth century): God is represented as a fisherman, Christ on the cross as a bait on a fishhook, and the leviathan as a huge fish who took the bait. During the crusades German pilgrims sang:

O crux benedicta,	(O blessed cross,
aller holze beszista,	consisting of the best wood,
ane dir wart gevangan	on you was caught
der gir Leviathan.	the greedy leviathan).

This imagery was still relevant for Luther.[9]

Jewish representations of the leviathan and the behemoth are, in essence, of a different kind. It is commonly known, however, that both animals became symbols of the heathen world powers that were hostile to Jews, a designation that can be applied to the Babylonian, Assyrian, Egyptian, and other pagan realms. But less well known are the interpretations that arose in the Middle Ages, in which the unique, totally abnormal condition and attitude of the Jewish people toward all other peoples became discernible, a condition that cannot be compared with that of any other people. Here we are confronted by political myths of the most astonishing kind and by documents often fraught with downright magical intensity. They are produced by cabbalists and have naturally an esoteric character. Without losing their immanent esoteric nature they also became known outside Jewry, as can be gathered from Luther's *Table Talks*, Bodin's *Demonomanie*, Reland's *Analects*, and Eisenmenger's *Entdecktes Judenthum*.[10] According to such Jewish-cabbalistic interpretations, the leviathan represents "the cattle upon a thousand hills" (Psalms 50:10), namely, the heathens. World history appears as a battle among heathens. The

leviathan, symbolizing sea powers, fighting the behemoth, representing land powers. The latter tries to tear the leviathan apart with his horns, while the leviathan covers the behemoth's mouth and nostrils with his fins and kills him in that way. This is, incidentally, a fine depiction of the mastery of a country by a blockade. But the Jews stand by and watch how the people of the world kill one another. This mutual "ritual slaughter and massacre" is for them lawful and "kosher," and they therefore eat the flesh of the slaughtered peoples and are sustained by it. In other such teachings God plays for a few hours daily with the leviathan. Still others say that to save the world from the fierceness of this beast God has cut up the male leviathan and salted the flesh of the female leviathan in order to provide a feast for the righteous in paradise. Here we need not be detained by the details of the numerous depictions and combinations; of significance is that both the leviathan and the behemoth become in this interpretation Jewish battle myths of the grandest style. Looked at from the perspective of the Jews, each is an image of heathenish vitality and fertility, the "great Pan" that Jewish hatred and Jewish feelings of superiority have transformed into a monster.

In the face of such interpretations of the leviathan, it is fitting to dare to present an opposite interpretation, one that opens an entirely different vista that will permit Hobbes' *Leviathan* to be seen in an entirely new light. Because the leviathan is also a serpent or a dragon, it should be remembered that the two in myth and saga are identical animals but are viewed in Near Eastern and Jewish mythology as hostile and evil. Other, non-Jewish people have seen in the serpent or in the dragon a symbol of protective and benevolent deities. The Chinese dragon is not the only example. The Celts worshipped serpents and dragons; Lombards, Vandals, and other Germanic tribes had dragons or serpents as military emblems. Since time immemorial the dragon has served the Anglo-Saxons as a symbol displayed on the royal army banner; in 1066 at Hastings, King Harold awaited the Norman attack in the midst of his army, carrying a flag depicting a dragon, a flag that after William the Conqueror's victory was sent by him to the pope in

Rome. Herbert Meyer, to whom I am indebted for these historical facts, says that the flag depicting a dragon is in all likelihood of Germanic rather than oriental origin; it originated in England, where it was preserved as a military sign even after the Norman conquest until the fifteenth century.[11] The report of Ammianus Marcellinus (XVI: 12, 39) that Emperor Julian the Apostate had attached to his lance the purple sign of the dragon, "purpureum signum draconis," certainly points to the restoration of the old pagan-Roman dragon-adorned cohort emblem carried by a standard bearer instead of the monogram of Christ placed by Emperor Constantine the Great.

A sense of deeper mythical perception was surely effective in all the great political disputes of the European peoples. Also, the peculiar excitement that occurs in the more profound discussions of the leviathan probably has its roots right here. But if so, then it is even more necessary to ask whether Hobbes, who is considered to be the "prophet of the leviathan," has in this connection and with this symbol staked out a clear and definite position. This question has been fitting and urgent for some time. The Jewish scholar Leo Strauss, in a book that appeared in 1930,[12] examined the theologico-political treatise of Spinoza and established the latter's extensive dependence on Hobbes. He remarks in this context that Hobbes regarded Jews as the originators of the revolutionary state-destroying distinction between religion and politics. That is correct only insofar as Hobbes opposed the typically Judeo-Christian division of the original political unity. The distinction between the secular and the spiritual power was, according to Hobbes, alien to the heathens because religion was to them a part of politics; the Jews brought about unity from the side of religion. Only the Roman papal church and the power-thirsty Presbyterian churches or sects thrive on the state-destroying separation of the spiritual and the secular power. Superstition and misuse of alien beliefs in spirits arising from fear and illusion have destroyed the original and natural heathen unity of politics and religion. The struggle to overcome the Roman papal church's division between a "Kingdom of Light" and a "Kingdom of Darkness"—that is, the

restoration of the original unity—is, as Leo Strauss ascertained, the actual meaning of Hobbes' political theory. This is correct.

Looked at from the German side, Helmut Schelsky,[13] in presenting an appropriate polemic against the superficial labeling of Hobbes as a rationalist, mechanist, sensualist, individualist, or any other "ist," sees him as a theorist of political action who takes pains to present a political reality and whose writings are political action tracts, not systems of thought about general concepts. With the picture of the leviathan, "Hobbes challenges every theory of state fraught by religion, assuming thereby a place among the great political thinkers. His companions on this track are Machiavelli, Vico, and, more recently, Nietzsche and Sorel." But "the deep meaning of his concept of the leviathan" consists of the concreteness of the "earthly" and "mortal" god who is totally attuned to the political deed of man, who, time and time again, must bring him out of the "chaos" of a "natural" condition. In this way Hobbes led "his historically timely struggle against political theology in all its forms." The leviathan is the big symbol of this battle. However, according to Schelsky's conception—and in the precise sense of his conception of theorists of political action—the success of the struggle depends on whether the myth of the leviathan forged by Hobbes constitutes a faithful restoration of the original unity of life, whether the leviathan withstood the test of being the politico-mythical image battling the Judeo-Christian destruction of the natural unity, and whether he was equal to the severity and malice of such a battle.

NOTES

1. Plato, *Republic*, IX, 588. On the concepts of icons, idols, paradigms, and phantasms, see Hans Willms, Εἰκών, *eine begriffsgeschichtliche Untersuchung zum Platonismus*, I (Münster in Westphalia, 1935).

2. Here I only mention the names of Fr. Delitzsch, Zschokke, Knabenbauer, Gunkel, Torczyner, and König. On the pre-Jewish

leviathan see the periodical *Syria*, XII (1931), p. 357; on the behemoth see the Celtic catechisms by André Wilmart, *Analecta Reginensia* (Vatican City, 1933), p. 107; Erwin Preuschen, *Die Armenischen Adamschriften* [*Die Apokryphen Gnostischen Adamschriften.* Translated and extrapolated from the Armenian by Erwin Preuschen (Giesen, 1900)], pp. 31, 44. [There is no reference to the behemoth on page 31.] On the leviathan, Gottlieb Nathaniel Bonwetsch, *Die Apokalypse Abrahams: Das Testament der vierzig Martyrer* (Leipzig, 1897), pp. 22, 32, and the recently discovered Phoenician Baal poetry.

3. Wolf Baudissin, "Drache zu Babel," in Albert Hauck's *Realenzyklopädie für protestantische Theologie und Kirche*, V, 3rd ed. (Leipzig, 1898), pp. 3–12. Of the voluminous writings on the mythical and folkloric meaning of dragon and snake, I would at least like to mention here the explanations by the otherwise hushed-up work by Gougenot des Mousseaux titled *Dieu et les Dieux* (Paris, 1854), pp. 473ff., even though this work is in many respects understandably dated.

4. The fusion of leviathan with apocalyptic figures appears to have occurred late as a result of equating them in general with the "devil." In Wilhelm Neuss, *Die Apokalypse des. hl. Johannes in der altspanischen und altchristlichen Bibel-Illustrationen* (Münster in Westphalia, 1931), leviathan is not specifically mentioned, even though a few of the pictures of the "dragon" and of the "animal from the sea" may be construed as later interpretations of leviathan. Professor Wilhelm Neuss kindly informed me that the late orthodox Christian and early medieval illustration in *The Book of Job* always dealt with the narrative, for example, of Job and his friends, Job and his wife, Satan—not behemoth or leviathan—in the presence of God; this is confirmed by Kurt Weitzmann, in his book *Die byzantinische Buchmalerei des IX. und X. Jahrhunderts* (Berlin, 1935). In Ghent's *Liber floridus* (twelfth century), the Antichrist lords over leviathan, who is characterized as a serpent and is represented as a huge fish; thus he may be understood here to be a representation of the "world" and not an apocalyptic figure. Cf. Oswald Erich, "Antichrist," in the

Reallexikon zur deutschen Kunstgeschichte, ed. Otto Schmitt, I (Stuttgart, 1937), p. 716 [the source cited is in columns 719–29].

5. On this, see the presentation in the text of the celebrated and splendid work of the French iconographic school of Arthur Martin and Charles Cahier, "Monographie de la Cathédrale de Bourges," Part 1, in *Vitraux du XIII. siecle* (Paris, 1841–1844), pp. 137–40 (concerning the Thomas windows).

6. Mark Lidzbarski, *Das Johannesbuch der Mandäer. Einleitung, Übersetzung, Kommentar*, II (Giesen, 1915), p. 99 [It appears to the translators that Carl Schmitt should instead have cited page 201]. Professor Erik Peterson kindly has brought to my attention the Mandaean, Opicinius, and additional sources (Armenian Adam-writings; Slavic apocrypha, among others).

7. Richard Salomon, *Opicinius de Canistris, Weltbild und Bekenntnisse eines avignonesischen Klerikers des 14. Jahrhunderts* (London: Studies of the Warburg Institute, 1936), pp. 72–73: Gibraltar as the "ossa velut fistula" ["fistule eris"], Mallorca as the "nervi testiculorum" of leviathan.

8. Reinhold Seeberg, *Lehrbuch der Dogmengeschichte* [the 3rd ed. appeared in Graz in 1923; it was reprinted in Graz in 1953], Vol. II, p. 316 [The translators could not verify this reference]. With the exception of the behemoth, which appeared as the baited devil, I find the same theological interpretation advanced by Innocent III in a sermon on the first Advent Sunday (Migne, CCXVII, p. 217, "De triplici silentio"), "Behemoth," it says here, "est diabolus." For additional information see Martin and Cahier (see n. 5, above), pp. 138–39.

9. On medieval iconography cf. Joseph Sauer, *Die Symbolik des Kirchengebäudes* (Freiburg i. B., 1902), pp. 223, 333. On Luther see Harmannus Obendiek, *Der Teufel bei Martin Luther* (1931), p. 75. On the baited leviathan in the *Hortus deliciarum* see Johannes Zellinger ["Der geköderte Leviathan im Hortus deliciarum der Herrad von Landsperg"], in *Historisches Jahrbuch der Görres-Gesellschaft* (Munich, 1925), pp. 161–77.

10. On Luther's *Tischreden*, cf. Chapter II, pp. 22, below; on Bodin's *Demonomanie*, p. 23, below. The edition used, Johann

Andreas Eisenmenger's, *Entdecktes Judenthum* is the one that appeared under Royal Prussian privilege (Königsberg, 1711), vol. I, p. 401; vol. II, pp. 873ff., p. 885. The edition of Adrian Reland, *Analecta Rabbinica*, used here, which originally appeared in Utrecht in 1702, is the second edition of 1723. Reland ascribes to the Jewish interpretations an "intellectual" meaning and says in his Prolegomena: "Ita omne illud quod de comestione Leviathanis in saeculo futuro scriptum est in Talmude et alibi de alimento spirituali, non illo quo corpus nutritur, intelligunt. Comestio Leviathanis erit comestio spiritualis"; [Thus everything that at the time was written in the Talmud and elsewhere about leviathan's consumption was perceived as his spiritual sustenance, and not as sustenance of his flesh. Leviathan's consumption was spiritual consumption]. In his remarks, which appeared in 1817 in an otherwise well-disposed work toward Jews by Bail, who considered that narrative of the leviathan as "absurdity," says the Grand Rabbi Abraham of Cologne: "Il eût été bien plus naturel et équitable de supposer dans ce récit une allégorie, une énigme renfermant quelquesunes de ces vérités que le goût prédominant chez les écrivains orientaux se plaît constamment à cacher sous le voile des histoires les plus suprenants."

11. Herbert Meyer, "Sturmfahne und Standarte," in *Zeitschrift der Savigny-Stiftung* (German section), 51 (1931), p. 230.

12. Leo Strauss, *Die Religionskritik Spinozas* (Berlin: Academie-Verlag, 1930), p. 75 [English: *Spinoza's Critique of Religion*, translated by E. M. Sinclair (New York, 1965), p. 96.], with reference to the following places in Hobbes: "Elementa de Corpore Politico," II, VI–VIII; "De Cive," XII, p. 2; "Leviathan," XII, XXIX, and XLII. Strauss simplified Hobbes' presentation, making it into a simple contrast between Jews and heathens, whereas Hobbes actually was part of the struggle against typical Judeo-Christian doctrines and concretely advanced heathen-Christian-Erastian arguments according to which he presupposed a Christian community, the *civitas Christiana*, in which the sovereign does not touch the sole essential dogma that *Jesus is the Christ*, but protects it and only puts an end to the theological spec-

ulations and distinctions of the power-hungry priests and sectarians. The technologizing of the state (Chapter IV, p. 42, below) makes superfluous all distinctions among Jews, heathens, and Christians and culminates in the realm of total neutrality.

13. "Die Totalität des Staates bei Hobbes," in *Archiv für Rechts- und Sozialphilosophie*, vol. XXXI (1937/38), pp. 176–201. [The article by Schelsky ends on page 193 and is followed by G. D. Daskalakis' article titled "Der totale Staat als Moment des Staates" which ends on page 201.]

Chapter II

In conformity with the book and the text, let us ask next: What does Hobbes himself say about his leviathan, and what form does it assume according to the utterances and explanations in the renowned work that he entitles *Leviathan?*

The copper-plate engraving on the title page of the first English edition of *Leviathan* (1651) together with the title *Leviathan* and the motto taken from *The Book of Job*, Chapter 41:24 [(*non est potestas super terram quae comparetur ei*) upon earth there is not his like] immediately evoke in the work of Hobbes a very unusual impression: a gigantic man, composed of innumerable midgets, holding in his right hand a sword and in the left one a crosier, guarding a peaceful city. Under each arm, the secular as well as the spiritual, there is a column of five drawings: under the sword a castle, a crown, a cannon; then rifles, lances, and banners, and finally a battle; to these correspond, under the spiritual arm: a church, a mitre, thunderbolts; symbols for sharpened distinctions, syllogisms, and dilemmas; and finally a council.[1] These illustrations represent the characteristic means of using authority and power to wage secular-spiritual disputes. The political battle, with its inevitable and incessant friend-enemy disputes that embrace every sphere of human activity, brings to the fore on both sides specific weapons. The fortresses and cannons correspond to the contrivances and intellectual methods of the other side, whose fighting ability is by no means inferior. Next to the title *Leviathan*, which, as is the case of every striking title, has become better known and more famous than the book's content, the drawing on the title page has undoubtedly contributed to the powerful effect that the book evokes. The important realization that ideas and distinctions are political weapons, in fact, specific weapons of wielding "indirect" power, was thus made evident on the first page of the book.

The reader who then endeavors to apply this realistic interpretation of the significance of the illustration to the content and formulations of the book will be somewhat disappointed, for the mythical impression that the heading and the drawings on the title page evoke regarding the leviathan is not at all confirmed by the explicit references in the book. As has already been said, in the drawing on the title page the leviathan does not appear in the form of a dragon or a sea monster or some kind of a serpent or a crocodile or a creature resembling a whale, which may be regarded as

a leviathan in the sense depicted in *The Book of Job*, but instead, in the form of a majestic huge man. The designations *magnus homo* and *magnus Leviathan* are used interchangeably in the text of the book. The sea animal of the Hebrew Bible and the Platonic conception of the huge man, the μάκρος ἄνθρωπος, in other words, two distinct images, are thus presented standing side by side. This need not be disquieting and could, on the contrary, be reassuring. In numerous mythical images man and animal fuse into one another, and by virtue of presenting a huge man and a huge animal before they become one, the mythical apparition becomes plausible.

However, in the text of the book, the leviathan is mentioned only three times. At the very beginning of the book Hobbes says that *civitas* or *res publica* is a huge man, a huge leviathan, an artificial being, an *animal artificiale*, an *automaton*, or a *machina*. Without any special explanation or elucidation, the expression *magnus ille Leviathan* is introduced here as a characterization of the huge man and the huge machine. Thus now there are three images: a huge man, a huge animal, and a huge machine forged by human art and human wit. The second time the leviathan is mentioned is Book II "Of Commonwealth," Chapter 17. Here Hobbes constructs his theory of the origin of the state: A representative person is designated or a corporation comes into being by way of a covenant between individuals. For its part the individual or corporation elevates those that entered into the covenant to a unified person, namely, the state. This is, says Hobbes, the coming into being of that great leviathan, or, he adds, "to speake more reverently,"[2] of the *deus mortalis*, of the mortal god, who, because of the fright (terror) that this power evokes, imposes peace on everyone. Next to the huge man, the huge animal, and the huge machine appears, without any further explanation, the fourth image, god who is a mortal god. What appears to have been attained is a mythical totality composed of god, man, animal, and machine. This totality assumes the Hebrew Bible name "leviathan." But the actual explanation of the Hebrew Bible image is given by Hobbes for the first time at the end of Chapter 28, when he mentions

leviathan for the third time. The explanation is very brief and does not correspond to the great expectations that a mythical blending of god and animal, animal and man, man and machine evokes. The context is the problem of punishments and rewards, both of which Hobbes considers necessary to influence men, above all, to curb their arrogance and other wicked passions. The possessor of the highest power, the ruler and administrator of the state, the "governor" as he is called in the English text, "rector" in the Latin text, has punishments and rewards at his disposal. The "rector," and not the state as a whole, or as a political unit, is compared to the great leviathan on account of his *ingens potentia* [huge power], evoking what God says about the leviathan in *The Book of Job,* Chapter 41:24 (King James translation, Chapter 41:33): "Upon the earth there is not his like."

This is the only explanation of the image of the leviathan given by Hobbes. Every reference cited by him has been extrapolated from this text in the Bible—"Non est potestas super Terram, quae comparetur ei, Qui factus est ut nullum timeret. Omne sublime videt: Ipse est rex super universos filios superbiae" [Upon earth there is not his like, who is made without fear. He beholdeth all high things: He is a king over all the children of pride]—refers only to the fact that the possessor of sovereign power wields the highest temporal power indivisibly, and through the "terror of such power and force" (as it is called in Chapter 17), everyone, especially the great ones, the "children of arrogance," is subject to him. In the political situation of the seventeenth century, that is, in the struggle between absolute state power and the authority of the nobility and the church, the leviathan—according to this explanation—no longer projects an image of the highest, indivisible, and strongest temporal power, one in accord with the biblical symbol of the most powerful animal.

In a subsequent chapter, Chapter 33, Hobbes becomes one of the first critics of the Bible as source material as he examines the individual books of the Hebrew Bible. Here he also mentions *The Book of Job* in a few critical remarks that were adopted by Spinoza in his *Tractatus Theologico-Politicus* (Chapter X, 18). Noth-

ing special can be gleaned here about the leviathan as a mythical figure. Hobbes also treated the image of the leviathan just as mysteriously in his 1682 answer to Bishop Bramhall, who attacked him in *The Catching of the Leviathan*. There an explanation of the leviathan's image would have been quite appropriate.

On the other hand, in a brief publication against Bramhall, which appeared in 1656 (*The Questions Concerning Liberty, Necessity, and Chance*), Hobbes mentions that "Behemoth against Leviathan" would be the proper title for an endeavor to refute the leviathan, citing the name of the other monster depicted in *The Book of Job*, the behemoth. He then used this title for a book in which he provided a historical account of the Presbyterian and Puritan Revolution of 1640 to 1660. Because royal censors refused at first to grant permission to publish this work, its publication was delayed until 1682, after Hobbes' death. Although the book title is not elucidated in the text, the behemoth is presented as a symbol of the anarchy brought about by the religious fanaticism and sectarianism that destroyed the English commonwealth during the Puritan Revolution. How do the monsters, leviathan and behemoth, relate to each other in Hobbes' theory? That the leviathan signifies the state and the behemoth represents revolution has obviously not been derived by Hobbes from mythical speculations. Yet it is no accident that for the seventeenth-century Englishman the sea animal becomes the symbol of a peacemaking order, for the leviathan, "the huge whale," was not an animal alien to the imagination of the English people. In essence, however, both the peace-enforcing function of the state and the revolutionary, anarchistic force of the state of nature are comparable elementary forces. According to Hobbes, the quintessential nature of the state of nature, or the behemoth, is none other than civil war, which can only be prevented by the overarching might of the state, or the leviathan. It follows that one of the monsters, the leviathan "state," continuously holds down the other monster, the behemoth "revolutionary people." In the formulation of C. E. Vaughan, a distinguished English authority on Hobbes, the leviathan is "the only corrective" for the behemoth. The abso-

lutism of the state is, accordingly, the oppressor of irrepressible chaos inherent in man, or as Carlyle said in his drastic manner, anarchy plus police. The exposition by Paul Ritterbusch confirms the "parity" of the leviathan and the behemoth, and by doing so presents a clear picture of Hobbes' theory of the state.[3]

A textual examination of the meaning of leviathan in Hobbes' *Leviathan* reveals that the leviathan is an efficacious citation from the Bible, illustrating, by means of an animal, the strongest temporal power, whose overarching strength keeps all the weaker ones in check. The meaning of the image seems to be limited to the utility of the concept. Such a conclusion must, however, be tested according to the linguistic-historical use of the word because the image of the leviathan at the time when Hobbes made him a symbol of his conception of state was in a very definite historical stage of development.

Although the Christian-theological and the Jewish-cabbalistic conceptions mentioned above (pp. 7–9) were repressed by humanism and the Renaissance, in no way did they meet a sudden end. The Counterreformation provided them with new buoyancy. Good examples with ample biblical and astrological references are provided by Tomasso Campanella in his works about the "Sun State" (1602) and the "Spanish Monarchy" (1640), even though he does not refer explicitly to the leviathan. That serpent is not an especially appropriate theme for the "emblem" and "allegory" inclined baroque. On the other hand, the leviathan was infused with a new demonic force by the biblical religiosity of the Protestant movement. "The vile serpent, the Leviathan," has the same meaning for Wyclif in the fourteenth century as for the profane literature of the following two centuries. In Luther's *Table Talk* the serpent is the prince of this world whom God permits to confuse mankind but whom, however, he simultaneously restrains and with whom he plays daily for three hours for his amusement. "Ita Leviathan est magnus ille draco, quem firmavit deus ad illudendum ei, quem per suos pios irritat, et ipse narret sich mit yhm singulis diebus tribus horis." They (that is, the behemoth, the whale, and the leviathan) are "disguised words and figures or images with which

to indict the devil."[4] That God plays daily for a few hours with the leviathan is an original, obviously cabbalistic, interpretation of the place in *The Book of Job* in which a certain irony toward the powers of this world is already apparent. But because the conception remained steeped in the demonic-metaphysical tradition, it had not yet become subjectively romantic.

In Jean Bodin too the leviathan retains its old demonic meaning. According to his *Demonomanie*, "Of Leviathan, that is, the devil, whose might on earth cannot be resisted by anyone, as it is stated in *The Book of Job*, it is reported that he is not satisfied with the body alone but lays snares for the soul too, and this is why it is not possible to enter into agreements with him. This holds true for those who believe that they possess in their power the secret spirits." Here Bodin is possibly affected by cabbalistic and other Jewish influences, to which he was undoubtedly heavily indebted.[5]

Of Jewish origin is apparently also the understanding of a contemporary of Hobbes, Isaac de La Peyrère, who exercised a great influence on Spinoza's critique of the belief in miracles. He speaks in his (for many reasons, important) 1655 book about a reference to the "pre-Adamites" (people who did not descend from Adam but were of a different origin) in *The Book of Job*, Chapter 41, which deals with the Chaldean magicians, who cite the leviathan "qui Daemon est." He adds that it has been affirmed that there exist a land and a sea leviathan or, in other words, a land and a sea demon.[6] La Peyrère refers here to Philippe Codurc, who was, during Hobbes' time, France's most famous commentator on *The Book of Job*. In 1651, when Hobbes published his *Leviathan*, Codurc published in Paris a Latin translation of *The Book of Job* with scholia. In the preface he speaks of the great *Woe* of the Apocalypse, in Chapter 12 of the old dragon Python, "qui Diabolus appellatur, humani generis hostis" [who is named "devil," a foe of mankind] who produces heretical doctrines and falsifies Scripture. He turns against the heretics, especially Calvin, a development that is of interest because he himself was a Protestant clergyman who converted to Catholicism only in 1645. In his

translation, he does not place the leviathan and the behemoth in the Apocalypse and maintains that in *The Book of Job* the behemoth is an elephant and the leviathan a whale, not symbolically but "proprie." Nevertheless, he also mentions their "metaphorical" sense in which both animals represent kings and princes of this world to whom God has bequeathed power. Also, he compares them to an army. The leviathan, he adds, represents not only the huge whale but also the dragon who is killed by the elephant (the behemoth).[7]

In summary, the essentially demonic content of the image vanishes between 1500 and 1600. The popular medieval belief in demons, which was still alive in Luther, disappears; the evil spirits change into grotesque or even humorous ghosts. The image of the leviathan experienced a similar fate in the literature of the sixteenth century, which can be seen in the rendition of the devil or the demons from the time of Hieronymus Bosch until the so-called hell of Bruegel. The medieval belief in demons was still intact in Bosch (circa 1500); his devils are ontological reality, not the products of a fantasy of horror; the landscape is hell, whose fire in many places breaks through the veil of earthly colors, not a mere scene or a stage for an eccentric play of figures. Bruegel's hell (around 1600) reveals no trace of this dangerous reality. Instead, he has turned it into an aesthetic and psychologically interesting place. Between the demonology of Hieronymus Bosch and the hell of Bruegel the notion of worldly realism arose; Bruegel's peasants are typical manifestations in art, and in English literature the imposing dramatis personae of Christopher Marlowe and Shakespeare projected themselves on stage. The leviathan is cited a few times in Shakespeare's dramas as a powerful, enormously strong, or quick sea monster, without any symbolism pointing toward the politico-mythical. Moreover, when he illustrates the unrestrained savagery of the plundering soldiers, as, for example, in the third act of *Henry V*, he gives no hint of medieval theological demonology or of a methaphysically determined enmity.[8]

Notwithstanding fanatical Bible-quoting writers, English literature was governed at the time of Hobbes' *Leviathan* (around

1650) by a completely nonmythical and nondemonic conception of the leviathan. The leviathan, it appears, was hardly suitable as an allegory in the style of the sixteenth and seventeenth centuries. For example, Milton did not attach any enigmatic symbolism to the leviathan in his *Paradise Lost*, depicting him as a huge sea monster. In a satirical-literary depiction of hell by Thomas Dekker, which was published for the first time in 1607, there appears a postillion of hell who explains its geography to a just deceased London miser and is characterized as a "lackey of that great leviathan." If I understand his depiction correctly, the leviathan is still the devil but not in the medieval-theological sense or in the sense of Dante's portrayal in *The Inferno* or even in the sense of Swedenborg's images of hell, but in a thoroughly literary-ironic sense and in the style and in the atmosphere of English wit.[9] In Sanderson's *Sermons* (II/310) of around 1630, God deals "with the great leviathans of the world." Here the leviathans are simply "the greats" of this world. This colloquial usage evolved further, permitting Burke (*Works*, VIII, 35) to speak of the Duke of Bedford as the "Leviathan of all the creatures of the Crown" and de Quincey (in 1839) of a lawsuit against such a powerful opponent as the "leviathan of two counties."

The leviathan finally becomes a humorous description of all sorts of unusually large and powerful men and things, houses, and ships. Slang, too, has appropriated this imposing word.[10] Hobbes was undoubtedly responsible for exerting a specific influence on the colloquial usage of the word. I am not sure whether a place in Richard Ligon's *History of the Island of Barbados*, which reminds one of Hobbes' description, was actually influenced by him: "What produces harmony in that leviathan is a well-governed commonwealth."[11] It is understandable why Locke, Hobbes' adversary, did not avoid the polemical usage of leviathan: "A Hobbist will answer: 'because the Leviathan will punish you, if you do not.'" Mandeville's fable about the bee (1714) speaks in a typically Hobbesian manner: "The gods decided that millions of you, well attached to each other, compose the strong leviathan."[12,13]

Because of Hobbes' psychological peculiarity, it is possible that behind the image of the leviathan is hidden a deeper, symbolic meaning. Like all the great thinkers of his times, Hobbes had a taste for esoteric coverups. He said about himself that now and then he made "overtures," but that he revealed his thoughts only in part and that he acted as people do who open a window only for a moment and close it quickly for fear of a storm.[14]

The three references to the leviathan that appear in the text of Hobbes' book could symbolically be conceived as three windows opened for a moment. Further endeavors to decode the symbolism of Hobbes' leviathan would lead us into biographical and individual psychological inquiries. In part we could glide into the kinds of investigations as the one that led Maxime Leroy to the mysterious Rosicrucian sensibility of Descartes and thereby uncover in respect to the leviathan some cabbalistic and other secret doctrines that use the leviathan as an esoteric symbol. Indeed, there is something mysterious about how completely the Christian popular belief in demonology manifested in the Middle Ages vanished in the sixteenth and seventeenth centuries.[15] Now is not the time to begin such difficult inquiries. At any rate, any exclusively biographical-psychological result, however important it may be, will not definitively answer our question, which is directed at ascertaining the influence of the political myth as an arbitrary historical force.

NOTES

1. On account of its superior quality, the reproduction of the title page drawing of the leviathan in this treatise (cf. the illustration on p. 17) is taken from the large edition of 1750. This reproduction accords with the title page drawing of the 1651 edition on all points that are essential to us. The peculiarity of the 1651 edition that is of no interest to us consists of the designation of the name of its publisher Andrew Crooke.

2. In the Latin text we read: "Atque haec est Generatio magni illius Leviathan, vel (ut dignius loquar) Mortalis Dei; cui

Pacem et Protectionem sub Deo Immortali debemus omnem." The English text reads as follows: "This is the Generation of that great Leviathan, or rather (to speake more reverently), of that Mortall God, to which we owe under the Immortal God, our peace and defence." Helmut Schelsky, "Die Totalität" (above Chapter I, n. 13), pp. 190–91, interprets the phrase "to speake more reverently" as commensurate with the expression "mortal god." This is absolutely correct. Although two quantities belong to every comparison, this need not necessarily preclude that the designation "leviathan" as a characterization of the state by Hobbes was perceived as less respectful. I have never said that Hobbes was not serious in his deification of the state; I only opined that the image of the leviathan in Hobbes is inadequate for his conception of the state, but can more adequately be explained contextually as "a half-ironical literary idea borne out of good English humor" of his period.

3. Paul Ritterbusch, *Der totale Staat bei Thomas Hobbes* (Kiel, 1938); cf. below, Chapter 3, pp. 33–34. C. E. Vaughan, "Studies in the History of Political Philosophy before and after Rousseau," I (*From Hobbes to Hume*), (London, 1925), p. 53. Ferdinand Tönnies, *Thomas Hobbes, Leben und Lehre*, 3rd ed. (Stuttgart, 1925), p. 61, says about the leviathan-behemoth relationship: "The state is one monster, the revolution another." John Laird, *Hobbes* (London, 1934), p. 36, points out that the title suggested by Hobbes himself, namely "Behemoth against Leviathan" meant only the superiority of a landmonster over a seamonster; of course, it must be remembered that the Long Parliament was imputed to be a detestable monster, while, on the other hand, Hobbes' artificial man was presented as a benevolent giant. But in Job 40:19 the behemoth was characterized as "the first in rank of the works of God."

4. Weimar edition of the *Tischreden* [*Table Talks*], 2, No. 2598a, and 6, No. 6829; Luther speaks in the same connection, about the whale; cf. Harmannus Obendiek (above, Chapter 1, n. 9), note 275; as far as I can see, Obendiek does not especially mention the leviathan.

5. *Daemonomania* (Latin edition, 1581), Book II, Chapter 6, and Book III, Chapter I; Bezold, "Jean Bodin als Okkultist und seine *Daemonomania,*" in *Historische Zeitschrift 105* (1910), pp. 1ff. This article is also reprinted in Bezold's collected works.

6. Isaac de La Peyrère, *Praeadamitae, quibus inducuntur Primi Homines ante Adamum conditi* (1655), p. 234. Christian Thomasius already noted the influence of La Peyrère on Spinoza; cf. Leo Strauss, *Die Religionskritik Spinozas* (Berlin: Academie-Verlag, 1930), pp. 32ff. and p. 287.

7. Philippe Codurc, *Libri Job, versio nova ex hebraeo cum scholiis* (Lutetiae Parisiorum, 1651). The expositions concerning the leviathan and behemoth are in the scholia to Chapter 40, pp. 321ff.; on the killing of the behemoth by the leviathan, pp. 326–27 ("elefanti perimuntur a Draconibus. Leviathan vero non modo immane cete, Balaenam, sed etiam draconem significat" [elephants were destroyed by serpents. In truth leviathan was not only a huge sea-animal, a whale, but he also represented a serpent]); on the leviathan as an army (army-worm), p. 332.

8. *Henry V*, Act III, Scene 3; further, *A Midsummer Night's Dream*, Act II, Scene 1 (the legendary swiftness of the leviathan), and the *Gentlemen from Verona*, Act II, Scene 2 (without a precise meaning).

9. Thomas Dekker, *A Knights Conjuring* (London: Percy Society, 1842), p. 60.

10. On places mentioned in the text, and further references, see *The Oxford English Dictionary*, VI (1933), p. 228, under "c": Leviathan in the sense of "a man of vast and formidable power or enormous wealth." Moreover, Eric Partridge's *Slang-Lexicon* [correct title: *A Dictionary of Slang and Unconventional English*] (London, 1937), p. 479: "Leviathan = a heavy backer of horses." [In the 8th edition published in London in 1984, the entry is found on p. 679.]

11. This place from Richard Ligon's *History of the Island of Barbados* is cited in *The Oxford English Dictionary* (see above, n. 10), as originating in 1657. But from Ligon's biography in the *Biographie Universelle*, vol. 24, p. 530, I gather that the first edition

of this book appeared in 1650, thus antedating the publication of Hobbes' *Leviathan* in London. Because I have no access to the original, I cannot check the usage of the word "leviathan."

12. On Bernard Mandeville's dependence on Hobbes, especially the remark by Stephen, who calls the fable about the bee a "beerbench edition of Hobbes," cf. Tönnies (above, n. 3), p. 307, note 131, and the works cited there. John Locke, *Human Understanding*, I, 3 (1690).

13. The overview presented in the text concerning a historical development of the meaning [of leviathan] should not be construed as an exhaustive philological exposition. But it explains, I believe, the remark I made in 1937 (in the *Archiv für Rechts- und Sozialphilosophie*, XXX, pp. 161–162 [see appendix]), that the utilization of the image of the leviathan by Hobbes can be attributed to a "half-ironic literary idea born out of a fine sense of English humor." My colleague the philologist of English at the University of Berlin, Professor Walter Schirmer, kindly informed me that in his opinion my assessment is on target. Helmut Schelsky (in *Die Totalität, op. cit.*, p. 190, note 11) maintains, on the other hand, that my explanation is nothing more than just such a "whim." This is not entirely justified. But I admit that the question is not exhausted by merely considering the word in its historical setting. Schelsky's criticism has thus become relevant to me for which I thank him. Ultimately this is of greater significance than any further controversy.

14. Tönnies, *Thomas Hobbes, Leben und Lehre*, p. 240; cf. also the remark in the introductory biography of the great Hobbes edition of 1750.

15. Maxime Leroy, *Descartes, le philosophe au masque*, I (Paris, 1929), pp. 69ff., with a motto by Descartes: "Les sciences sont actuellement masquées"; René Guénon, *La Crise du monde moderne* (Paris, 1927), pp. 39–40, says that the rapidity with which the entire medieval civilization succumbed with the advent of the seventeenth century, is incomprehensible without the assumption of a puzzling, in the background remaining, "volonté directrice" and the "idée préconçue." Martin and Cahier, "Mono-

graphie de la Cathédrale de Bourges," p. 138, observed how the symbols that were alive in the thirteenth century became obscured in the course of the fourteenth century and have disappeared without a trace since the sixteenth century. The inroads of a new, totally different world is most visible in Karl Giehlow's imposing work *Die Hieroglyphenkunde des Humanismus in der Allegorie der Renaissance, besonders der Ehrenpforte Kaiser Maximilians I* (Vienna, 1915). Fish, too, appear here. They are supposed to signify injustice and wickedness not as the leviathan but only as Egyptian or ancient classical symbols.

Chapter III

But what is the significance of the image of the leviathan in the intellectual context and in the conceptual and systematic construction of Hobbes' theory of the state?

The starting point of Hobbes' construction of the state is fear of the state of nature; the goal and terminus is security of the civil, the stately (*staatlichen*) condition. In the state of nature everyone can slay everyone else; "everyone can do this great feat." In respect to posing and carrying out this threat all are equal. As Hegel characterized it, "everyone is weak vis-à-vis everyone else." To this extent "democracy" prevails in the state of nature. Everyone knows that everyone can slay everyone else. Everyone is therefore the foe and the competitor of everyone else—the well-known *bellum omnium contra omnes* [war of all against all]. In the "civil," stately condition all citizens are secure in their physical existence; there reign peace, security, and order. This is a familiar definition of police. Modern state and modern police came into being simultaneously and the most vital institution of the security state is the police. It is astonishing that Hobbes appropriated as a characteristic of the condition of peace brought about by the police the formula of Francis Bacon of Verulam by speaking of man becoming god to man, *homo homini deus*, whereas in the state of nature man was wolf to man, *homo homini lupus*. The terror of the state of nature drives anguished individuals to come together; their fear rises to an extreme; a spark of reason (*ratio*) flashes, and suddenly there stands in front of them a new god.

Who is this god who brings peace and security to people tormented by anguish, who transforms wolves into citizens and

through this miracle proves himself to be a god, obviously a "mortal god," a *deus mortalis*, as Hobbes called him?

The expression "mortal god" has led to many misunderstandings and misinterpretations. The confusion is so great because Hobbes used three distinctly different representations for his "god." In the forefront stands conspicuously the notorious mythical *leviathan*, that has assimilated god, man, animal, and machine. Next to it serves a juristically constructed covenant to explain the appearance of one sovereign *person* brought about by representation. In addition, Hobbes transfers—and that seems to me to be the gist of his philosophy of state—the Cartesian conception of man as a mechanism with a soul onto the "huge man," the state, made by him into a machine animated by the sovereign-representative person.

That the state is characterized as "god" has no particular meaning in Hobbes' construction of the state. To the extent that this characterization does not constitute a mere turning point of the Middle Ages or of the time of Louis XIV, it projects a strong polemical thrust. Whoever defends the rights of the state against the claims of the God-invoking pope, of Presbyterians and Puritans, cannot simply relinquish the divinity to his opponents and to the church. "Chacun prend à l'ennemi, qu'il le veuille ou non." The German historians Gisbert Beyerhaus and Karl Theodor Buddeberg have shown that in the concept of sovereignty in modern public law, Calvin's concept of God and his *legibus solutus* appears in secularized form.[1] The eminent English authority of this epoch of religious wars and conceptualizations of the state, John Neville Figgis, said that the God of Calvinism is the leviathan of Hobbes, an omnipotence that is unchecked by law, justice, or conscience.[2] For Hobbes god is above all power (*potestas*). He used the traditional formulation of the Christian Middle Ages regarding the public sovereign, namely, "governor of god on earth" instead of "governor of the pope on earth." Inferring the "godlike" character of the "sovereign" from his "almighty" supreme state power does not, however, provide a justification in the sense of an intellectual demonstration. The sovereign is not the *Defensor Pacis* of

a peace traceable to God; he is the creator of none other than an earthly peace. He is a *Creator Pacis*. The justification provided, on the contrary, proceeds the other way around, as in the thought processes of "divine" right: Because state power is supreme, it possesses divine character. But its omnipotence is not at all divinely derived: It is a product of human work and comes about because of a "covenant" entered into by man.

The decisive element of the intellectual construction resides in the fact that this covenant does not accord with medieval conceptions of an existing commonwealth forged by God and of a preexistent natural order. The state as order and commonwealth is the product of human reason and human inventiveness and comes about by virtue of the covenant. This covenant is conceived in an entirely individualistic manner. All ties and groupings have been dissolved. Fear brings atomized individuals together. A spark of reason flashes, and a consensus emerges about the necessity to submit to the strongest power. If this construct were viewed from its result, from the perspective of the state, what it would reveal is that the state is something more than and something different from a covenant concluded by individuals. The assemblage of men gathered together by the fright of fiends cannot, from the presuppositions of their gathering, overcome hostility. The pluralistic "state of nature" cannot be transferred, as Paul Ritterbusch aptly said, by using analytic concepts of rationalism, to an entirely different condition of unity and peace.[3] Even though a consensus of all with all has been achieved, this agreement is only an anarchico-social, not a state, covenant. What comes about as a result of this social covenant, the sole guarantor of peace, the sovereign-representative person, does not come about as a result of but because of this consensus. The sovereign-representative person is much more than the sum total of all the participating particular wills. To be sure, the accumulated anguish of individuals who fear for their lives brings a new power into the picture: the leviathan. But that affirms rather than creates this new god. To that extent the new god is transcendent vis-à-vis all contractual partners of the covenant and vis-à-vis the sum total,

obviously only in a juristic and not in a metaphysical sense. The intrinsic logic of the manmade, artificial product "state" does not culminate in a person but in a machine. Not the representation by a person but the factual, current accomplishment of genuine protection is what the state is all about. Representation is nothing if it is not *tutela praesens*. That, however, can only be attained by an effectively functioning mechanism of command. The state that came into being in the seventeenth century and prevailed on the continent of Europe is in fact a product of men and differs from all earlier kinds of political units. It may even be regarded as the first product of the age of technology, the first modern mechanism in a grand style, as a *machina machinarum* in Hugo Fischer's appropriate formulation. With that state was created not only an essential intellectual or sociological precondition for the technical-industrial age that followed but also the typical, even the prototypical, work of the new technological era—the development of the state itself.

Consequently, the sovereign-representative person could not hinder the mechanization of the image of the state that occurred in the following century. Timebound to the seventeenth century, it expressed the idea of representation of the baroque, and of the state of princely absolutism. It found a beautiful and simple expression in a statement by a Stuart, James I, who said that a king always stands "on a public stage." In Hobbes, the state is not in its entirety a person. The sovereign-representative person is only the soul of the "huge man" state. The process of mechanization is not, however, arrested but completed by this personification. This personalistic element too is drawn into the mechanization process and becomes absorbed by it. As a totality, the state is body and soul, a *homo artificialis*, and, as such, a machine. It is a manmade product. Its material and maker, *materia et artifex*, machine and engineer, are one and the same, namely, men. Also, the soul thereby becomes a mere component of a machine artificially manufactured by men. Thus the "huge man" as the sovereign-representative person could not prevail in history, for he himself was nothing but a product of human art and human intelligence. The

leviathan thus becomes none other than a huge machine, a gigantic mechanism in the service of ensuring the physical protection of those governed.

Hobbes by no means turns the "state" constructed by human beings and the "civil" peace that it engenders into an earthly paradise. He is equally far removed from Bacon's *Atlantis* as from the dreams of paradise of eighteenth- and nineteenth-century humanitarian enthusiasts of progress. State and revolution, leviathan and behemoth, are actually or potentially always present. The introduction of the leviathan does not have some ulterior meaning, as is suggested by opening a secret side door to the dreamland of excessive fantasies, which some rationalists use to introduce the other side of their rationalism. A very famous example of this kind is the depiction by Condorcet in his *Esquisse d'un tableau historique des progrès de l'esprit humain* (1794): a paradise of mankind brought about by reason and education. Here one finds some resemblance to the basic constructs of Hobbes: Life is of interest only insofar as it concerns the here and the now, the physical existence of the individual, of actual living beings; the most important and the highest goal is security and the possible prolongation of this kind of physical existence. The great mathematician Condorcet considers the problem of immortality to be a mathematically infinitesimal one and believes that in the infinity of time, by an ever gradual postponement of death from old age, the nuisance of dying will finally cease and everybody will become a kind of Methuselah, whereby he attains a kind of worldly eternity. In Condorcet the state of the absolute princes on the European continent, especially in France, is presented as having performed its historic task for more than a century, the police having provided well for public security and order. Condorcet therefore no longer considered man to be radically evil and wolflike, but good and educable. In this phase of the rationalist doctrine, the compulsory and educational work of the state was regarded as historically timebound, a transient affair, and at any rate it was expected that the state would make itself superfluous in time. In other words, the dawn of a day when the great leviathan would be slaughtered was already visible.

Hobbes was far removed from such conceptions. Although his theory admits the possibility of exerting influence through compulsion and education, he had no great illusion about human nature. He understood that man is more "asocial" than an animal, full of anguish and worry about the future, driven not only by present but also by potential hunger, *fame futura famelicus*. Possessed by passion of prestige and rivalry, he is at all times determined and ready to trample on reason and logic in order to secure for himself immediate, momentary advantage. But the more dangerously this asocial "individualism" asserts itself, the stronger becomes the rational necessity for reaching a general peace. The difficult problem of fitting the rebellious and self-seeking man into a social commonwealth is finally solved, but only with the help of human intelligence.

Luckily all men aren't simply "pure" wolves. They are endowed with intelligence, even though in the state of nature they wage the war of all against all. In this respect Hobbes' construction of the state is still valid. That the rebellious fierceness and obstinacy of individuals must be overcome with the help of reason or intelligence is self-evident even today to those who subscribe to scientific, not utopian, thinking. Such a construction, for example, is to be found in the 1934 lecture by Carl Escherich titled *Termitenwahn*;[4] although Escherich was evidently not consciously influenced by Hobbes, from whose theories he deviated on many points. Yet on this decisive point his argument showed the same structure as Hobbes' and is therefore well suited to elucidate the problem. In contrast to Hobbes, Escherich compared the "states" of ants, termites, and bees with the state of humans. Yet simultaneously—and in doing so he was in agreement with Hobbes—he drew a great distinction between the political bent of ants and other insects with that of people. Whereas the states of ants, termites, and bees became possible only by the total extinction of their sexuality, the formation of the human state was infinitely more complex because man has not given up his sexuality and thus has retained his entire rebellious individualism. Man has a brain, an intellect, and this has enabled him to form the state without extin-

guishing his sexuality. "In the construction of a human state," says Escherich, "the foundation is dependent on the mightily developed brain. Only by virtue of this central organ, endowed with an almost unlimited plasticity, did it become possible to confront the enormous hindrances in the formation of the state, to overcome them by means of experience and insight into the advantages of state formation and as such, without the organic sacrifice of individuality and without mechanization to attain a community life, a society." If looked at from the (in essence, only relative) antithetical formulation of the organism-mechanism, Hobbes' theory of the state continues to be of undiminished relevancy. With admirable clarity in the seventeenth century, he had thought through the idea of a commonwealth brought about by human reason.

The decisive step occurred when the state was conceived as a product of human calculation. Everything else—for example, the development from the clock mechanism to the steam engine, to the electric motor, to chemical or biological processes—are the results of the evolution of technology and scientific thinking and do not require any new metaphysical resolution. La Mettrie, the notorious author of the *Homme-Machine* (1748), wrote *L'Homme-Plante* in a similar vein,[5] following the path paved by Hobbes. Through the mechanization of his "huge man," the μάκρος ἄνθρωπος, Hobbes leapt decisively ahead of Descartes and made a significant contribution to the anthropological interpretation of man. Nevertheless, the first metaphysical leap was made by Descartes at precisely the moment when the human body was conceived to be a machine and the human being, consisting of body and soul, was postulated to be in its entirety an intellect intent on a machine. The transfer of this conception to the "huge man," the "state," was thus near. It was consummated by Hobbes. It led, however, to the transformation of the soul of the huge man into a part of a machine. After the body and soul of the huge man became a machine, the transfer back became possible, and even the little man could become a *homme-machine*. The mechanization of the concept of the state thus completed the mechanization of the anthropological image of man.

NOTES

1. Gisbert Beyerhaus, "Studien zur Staatsanschauung Calvins, mit besonderer Berücksichtigung seines Souveränitätsbegriffs," in *Neue Studien zur Geschichte der Theologie und der Kirche*, 7. Stück (Berlin, 1910), for example, p. 65 ("ipse sibi lex"), and p. 72 ("majesty exceeding the *jus naturae* as the decisive sign of divine sovereignty"); Karl Theodor Buddeberg, "Gott und Souverän," in *Archiv des öffentlichen Rechts*, Neue Folge, vol. 28 [not 23] (1937), pp. 290ff., where the analogy is established between the concept of sovereignty in Bodin and the idea of God in Calvin. Attention has to be also called here to Buddeberg's article in *Archiv für Rechts- und Sozialphilosophie*, vol. XXX (1937), pp. 541ff., titled "Descartes und der politische Absolutismus." Also A. Passerin d'Entrèves' excellent work on Richard Hooker (*Memorie dell' Istituto Giuridico della R. Università di Torino*, Serie II, 22, Turin, 1932), p. 40, n.7. Concerning the description of king as "God" in the age of Louis XIV see Joseph Vialatoux, *La Cité de Hobbes* (Paris, 1935), p. 197.

2. John Neville Figgis, *The Divine Right of Kings*, 1st ed. (Cambridge, 1896; 2nd ed. 1934), p. 325: "The Deity of Calvinism is Hobbes' *Leviathan*, with power unchecked by law, justice or conscience." It is accordingly correct that for Hobbes—as is most evident in his answer to Bishop Bramhall—God is above all a power, not wisdom or justice.

3. *Der totale Staat bei Thomas Hobbes* (Kiel, 1938); Franz W. Jerusalem, *Der Staat* (Jena, 1935), p. 179, stresses that individuals by submitting actually do nothing more than abdicate the right of resistance. The contradiction present in the construction of the state covenant has often been noted, as for example by Fr. Atger, *Essai sur l'histoire des doctrines du contrat social* (Nimes, 1906 [Thèse de Montpellier]), p. 176; B. Landry, *Hobbes* (Paris, 1930), p. 163 (the social contract as a hypothesis); J. Vialatoux (see n. 1, above), p. 140 (the "discontinuité atomique" never turns into a "bonum commune").

4. Carl Escherich, *Termitenwahn* (A Chancellor's lecture in Munich on the education of a political man) (Munich, 1934).

5. *L'Homme-Plante*, published anonymously by Chr. Fr. Voss in Potsdam without the year of publication. In this work La Mettrie, like a "Harvey of botany," draws the analogy between the vegetable system of plants and the organs of the human body.

Chapter IV

Even though Hobbes was not an illusionist in Condorcet's conception of human progress, "mechanism" and "machine" obviously mean to this philosopher of the seventeenth century something different than to the intellectually educated of the nineteenth and twentieth centuries, for whom a century of profound conceptual differentiation separated "mechanism" from "organism" as well as from "work of art." The sharp differentiation between "organism" and "mechanism" finally prevailed at the end of the eighteenth century. The philosophy of German idealism, first Kant in *Critique of Judgment* (1790), distinguished "inner" from "outer," culminating in the distinction between living being and dead matter and thus draining the image of "mechanism" from all mythical, all living character. Mechanism and machine thus became inanimate, utilitarian bodies. To this must be added the further differentiation of dead mechanism from animate work of art in the sense of aesthetic productivity, a conceptualization made current by Schelling and the Romantics. For Hobbes, though, mechanism, organism, and work of art are still parts of the machine, conceived as products of the highest human creativity. Mechanism and the machine therefore had for him and for his age thoroughly mythical meanings.

Ernst Mach said quite correctly that this kind of rationalism was confronted in the physical universe by a mechanistic mythology of the animistic mythology of ancient religions. Notwithstanding Mach's concept of mythology, his observation is valid for the conception of the world that enabled Hobbes to incorporate the image of the leviathan into the huge machine. Because of this, Hobbes' concept of the state became an essential factor in the

four-hundred-year-long process of mechanization, a process that, with the aid of technical developments, brought about the general "neutralization" and especially the transformation of the state into a technically neutral instrument.

That contemporary cosmopolitans comprehend the state to be a technical apparatus can be understood by apprehending the fact that the "milieu" of the metropolis activates their fantasies about the technical and extrapolating the conception of the state from their visionary conception. With the incredible development of the technical means of disseminating communication, information, and weaponry, the power of the state's command mechanism grew in a manner that was astonishing. One can thus believe that the power of a modern state in comparison with that of ancient communities is proportionately much greater and more intensive, as, for example, is the range and piercing power of modern artillery in comparison with the effectiveness of a crossbow or a siege machine, or the speed of today's means of transportation in comparison with horses and sailboats. The exact functioning and the inner precision of modern technology appear to be independent qualities—independent of all religious, metaphysical, juristic, or political considerations or aims. This is obvious to everyone. How futile and fuzzy are theological, juristic, or similar arguments. How "clean" and "exact" is the machine in comparison! Consequently, the value of the state is said to reside in the fact that it is a well functioning, big machine, the *machina machinarum*. Western liberal democrats agree with Bolshevist Marxists that the state is an apparatus that the most varied political constellations can use as a technically neutral instrument. By extension, therefore, the machine, as all of technology, is independent of every political goal and conviction and assumes a value-and-truth neutrality of a technical instrument. It is in this vein that the neutralization process has taken place since the seventeenth century, a logical process that culminates in a general technologization.[1]

The decisive first step in the process occurred in one century that was filled to the point of despair and nausea with religious and theological strife, disputes, and bloody wars. After a century

of fruitless theological strife in which each party defamed the other and none managed to convince the other, the endeavor to find a neutral territory in which it would finally be possible to arrive at an understanding or reach a compromise leading to security and order is utterly comprehensible. At first, the search for security and order was centered in "natural" metaphysics, whose foundations and concepts were clear to everyone and whose mathematical accuracy was supposed to have been demonstrated by proof. This first approach, which deviated from traditional theology, did not always distinguish between tolerance and neutralization. Consequently the first and foremost task of theorists was to avoid quarreling theologians.

As early as the sixteenth century, one of the first representatives of this approach, the famous Heidelberg professor Erastus, was looking for government protection from the advocates of ecclesiastico-theological dogmatism and from the ecclesiastical thirst for power that wielded such efficacious weapons as "discipline" and "excommunication," or, as stated in modern parlance, of moral terror and social boycott. Nevertheless, Erastus did not cease to think like a believing Christian. Turning from the church toward the state did not yet signify to him the basic neutralization of every truth, which is the climax of the mechanization process. In the apt words of A. Passerin d'Entrèves: "Erastus was not yet an Erastian." To be sure, both tendencies, tolerance and neutralization, can coexist for a good stretch of history. Some sentences of Hobbes, especially those pertaining to the question of excommunication, are reminiscent of Erastus' thinking.[2] Furthermore, despair about the religious wars led the well-known originator of the modern concept of sovereignty, Jean Bodin, to become a decisionist in the sense of sovereign state power. In essence, however, what distinguished the work of Hobbes from that of Erastus as well as Bodin was his philosophical-systematic state theory, which made him a pioneer of modern scientific thinking with its accompanying ideal of technical neutralization.

Neutralization, which is the culminating point in the process of general mechanization, can also combine with tolerance. One nat-

urally and easily fuses into the other. But through advancing the goal of its inner logic, through elevating its ideal of achieving exact mechanization, this modern segment of "occidental rationalism" is just as distinct from all the various kinds of "tolerance" as it is from the many cases of skepticism, agnosticism, and relativism that are present at all times. For example, the famous question of Pilate: *quid est veritas?* may equally be an expression of a considerate tolerance as of a general, weary skepticism or of "open"-ended agnosticism. Also, it is possible to see it as an expression of state-administrative neutrality vis-à-vis the religious beliefs of subjugated peoples. Inasmuch as the administrative organization of the Roman Empire by Pilate's day had become to a large extent technically rationalized, the projection of neutrality corresponds to the apparent technical perfection of the state machine.

When Frederick the Great said in his political testament of 1752: "Je suis neutre entre Rome et Genève," he was alluding to his pride in the perfection of the Prussian state rather than his "philosophical" attitude toward taking sides in theological controversies. What is discernible in his statement is neutrality in the technical-political (*staatlichen*) sense rather than tolerance or personal skepticism. The state of Frederick the Great may even be seen, as Gustav Steinbömer aptly maintained, as an accomplished example of a mechanism animated by a sovereign person. "Neutrality" is only the function of technical state-administrative (*staatsverwaltungstechnischer*) rationalization.

For technically represented neutrality to function, the laws of the state must become independent of subjective content, including religious tenets or legal justifications and propriety, and should be accorded validity only as the result of the positive determination of the state's decision-making apparatus in the form of command norms. *Auctoritas* (in the sense *summa potestas*), *non veritas*. This sentence, often cited since 1922, as expressed by Hobbes, is anything but a slogan of irrational despotism. Nor should the expression be regarded as a kind of *Credo quia absurdum* [impossible belief], as it has so often been misunderstood.

What is significant in the statement is Hobbes' conclusion that it is no longer valid to distinguish between *auctoritas* and *potestas*, making the *summa potestas* into *summa auctoritas*.[3] The sentence thus becomes a simple, objective expression of value-and-truth-neutral, positivist-technical thinking that separates the religious and metaphysical standards of truth from standards of command and function and renders them autonomous.

A technically neutral state can be tolerant as well as intolerant; in both instances it remains equally neutral. Its values, its truth and justice, reside in its technical perfection. All other conceptions of truth and justice are absorbed by decisions promulgated in legal commands. The absorption of other kinds of standards and values into juristic argumentation would only create new conflict and new insecurity.

The state machine either functions or does not function. In the first instance, it guarantees me the security of my physical existence; in return it demands unconditional obedience to the laws by which it functions. All further discussions lead to a "pre-political" condition of insecurity, where ultimately one can no longer be certain of one's physical security because the appeal to justice and truth does not produce any kind of peace but instead leads to war, very wicked and vicious. Everyone claims, of course, that right and truth is on his side. But the assertion of being in the right does not lead to peace. Instead, it is designed to contravene the decisions of a well-functioning legal force that was created to end strife.

A new foundation was thus created for legal as well as for state-theoretical thinking, namely juristic positivism. The positivist law state (*Gesetzesstaat*) began as a historical type in the nineteenth century. But the idea of the state as a technically completed, manmade *magnum-artificium*, a machine that realizes "right" and "truth" only in itself—namely, in its performance and function—was first grasped by Hobbes and systematically constructed by him into a clear concept. The connection between the highest degree of technical neutrality and the highest authority is, as a matter of fact, not alien to the ingenious thinkers of the sev-

enteenth century. At the end of Campanella's vision of the "Sun State" appears a big ship without a rudder and a sail but driven by a mechanism that is commanded and guided by the possessor of "absolute authority."

The distance that separates a technically neutral state from a medieval community is enormous. This observation becomes discernible not only in the justification and creation of a "sovereign," in which the contrast between the divine right of kings as sacred "persons" and the rationalistically constructed command mechanism of the "state" is evident. Also, it shows itself in the legal status accorded to subjects in these two distinct configurations, which, in all relevant legal precepts, is basically different. In a medieval community, the feudal, or estate "right to resist" an unlawful ruler is self-understood. The vassal (or the estate) may invoke here divine right just as much as the feudal lord or ruler has the authority to do. Resistance as a "right" is in Hobbes' absolute state in every respect identical to public law and as such is factually and legally nonsensical and absurd. The endeavor to resist the leviathan, the all powerful, resistance-destroying, and technically perfect mechanism of command, is practically impossible. Even the juristic construction of a right to resist is here impossible as a precondition of resolution. There are no points of departure for a right to resist, irrespective of whether it be an objective or a subjective right. It has no place whatsoever in the space governed by the irresistible and overpowering huge machine of the state. It has no starting point, location, and viewpoint: It is "utopian" in the true sense of that word. Against the irresistible, overpowering leviathan "state," which subjugates all "law" to its commands, there exists neither a discernible "stance" nor a "resistance" (*"Wider-Stand"*). Such a state exists as a state, and in that case it functions as an irresistible instrument of quietude, security, and order and has all objective and all subjective rights on its side because, as the sole and highest lawgiver it makes all the laws or it does not exist and therefore cannot fulfill its function as the defender of peace, in which case the state has returned to a state of nature, and the state as such ceases to exist. The state can stop

functioning and the big machine can break down because of rebellion and civil war. This development, however, has nothing to do with a "right to resist." Viewed from the perspective of Hobbes' state, this would constitute a politically recognized right to civil war—that is, the right to destroy the state, a paradox. The state, after all, has been formed to end the kind of war that exists in a state of nature. A state is not a state unless it can put an end to that kind of a war. The state of the leviathan excludes the state of nature. It is not possible to imagine a construction that is more simple and "real," but its simplicity and reality rest on the technical character of its functions and commands.

The worldwide contrast shows itself ultimately in the domain of international law, a contrast most evident in laws that are possible only between states, and can be promulgated by states ordered only "as such." People and countries unable to forge an organizational apparatus characteristic of a modern state are "uncivilized"; as stated in Article 22 of the Geneva League of Nations: "Under the strenuous conditions of the modern world" (*dans les conditions particulièrement difficiles du monde moderne*) they are unable to govern themselves; they are made into colonies, protectorates, or in some other way into objects of protection and control by states able to perform this organizational-technical feat and therefore possess the quality of "subjects" of international law. Wars become pure state wars, that is, they cease to be religious, civil, or factional. Only states as self-contained units face one another as enemies. All order and all legal guarantees of the system of international law reside in the concept of the state.

The state derives its esteem and dignity from its organized inclusiveness and the calculability with which it functions rationally as a mechanism of command. From this follows the question of the just war, for such an interstate war is just as incommensurable as the question of just resistance within the state. In contrast to religious, civil, and factional wars, wars between states cannot be measured with the yardsticks of truth and justice. War between states is neither just nor unjust; it is an affair of state and as such does not have to be just. *Ordo hoc non includit.* The state has its

order in, not outside, itself. What is therefore essential to international law, which governs relations between states, is law that does not distinguish between just and unjust, a nondiscriminating concept of war. War between states derives its dignity and its honor and hence also its right from the fact that states wage wars only against states and that only states can face one another as enemies.

On the other hand, the discriminatory concept of war transforms the war of states into an international civil war. As in a legal order that recognizes the duel as a legal right, such a duel has its intrinsic legal guarantees to the extent that certain qualities are possessed by each duelist. In other words, only men who are capable of engaging in duels can do so, and every true duel, as such, can be considered neither just nor unjust. In the same vein, it is equally impossible to speak in international law of just or unjust wars between states as long as the law is essentially law that is "valid between states." As is well known, because England did not become a "state" in the same way as the great continental powers did, the Anglo-Saxon conception of international law did not adopt this continental concept of state and war. Derived from war at sea British law has developed its own concept of total enemy and total war. Unresolvable legal misconceptions and antitheses have resulted from these distinct concepts of war, and further incalculable confusion is still possible. The experience gained from World War I (1914-1918) waged against Germany contains a noteworthy lesson, for only the just war is the true "total" war.[4]

Hobbes was the first to state precisely that in international law states face one another "in a state of nature." In Hobbes' theory of state, this is conceptually significant, for it illuminates the distinction between the legal state and the extralegal state of nature. Although covenants are concluded in the state of nature, they always reflect great existential reservations that prevent a rational and legal security from emerging in place of a state of insecurity. Security exists only in the state. *Extra civitatem nulla securitas*. The state absorbs all rationality and all legality. Everything outside of the state is therefore a "state of nature." The thoroughly rational-

ized mechanisms of state command confront one another "irrationally." The more complete the internal organization of a state is, the less feasible it is for it to engage in mutual relations on an equal basis. The more thoroughly each state is developed, the less it is able to maintain its state character in interstate relations. There is no state between states, and for that reason there can be no legal war and no legal peace but only the pre- and extralegal state of nature in which tensions among leviathans are governed by insecure covenants.

In its mixture of huge animal and huge machine, the image of the leviathan attains the highest level of mythical force. It strikes at the foundation that is indestructible in the relations between great powers. The powers that wrestle with one another act in a zone that is continuously in danger. They will be lost if they cannot correctly distinguish between friend and enemy. As Carl August Emge said, here there are "no guarantees." Whoever searches for his security with another one becomes subject to that other one. In the words of Hans Freyer, everything here is "unsecured, straightforward, simple give and take," in an empty space, of sorts, "without tracks and switches that engage" the state's guaranteed legality. "The independent, peaceful states, in and of themselves, must stake their entire vital power against one another in order to assert themselves."[5]

Relations and events in a realm of this sort can be illustrated by animal fables, as, for example, the problem of aggression in the fable of the wolf and the lamb; the question of "guilt" in La Fontaine's fable of guilt over the plague, a guilt that, of course, was attributed to the donkey; disarmament, in a speech delivered by Churchill in October 1928, which depicts with English humor how every animal believes that his teeth are weapons of defense but that the horns of his opponents are weapons of aggression.

In essence then, it is possible to develop a clear and easily comprehensible theory of the state and of international law on the basis of the classical books of fables by Aesop and La Fontaine. Because the matter under consideration concerns the actual combat of elementary forces, the leviathans appear as huge animals.

But because they command tightly centralized command mechanisms that confront one another, mechanisms that are amply equipped with human intelligence and are able to assume pivotal postures by activating a mere switch on the switchboard, they appear as huge machines. Ernst Jünger sees in modern warships the most complete image of these power organizations: "swimming outposts of enormous power, armored compartments, in which the claim to power is compressed in a most narrow space." From the perspective of technology, Campanella's vision of the "Sun State" appears to become reality: The technically perfect mechanism of a big ship in the hands of an absolute authority who determines its course.

In view of such technically complete armatures, the question of right and wrong breaks down. It used to be said that even though there certainly are just wars, there are no just armies. That observation can be made of the state as a mechanism. Considering the leviathan as a great command mechanism of just or unjust states would ultimately be the same as "discriminating" between just or unjust machines. Machiavelli's assertion at the end of *The Prince* that war that is necessary for Italy is just, and that weapons that remain as the last salvation are humane (*pietose*), then this still rings as very humane in comparison to the commands that are made in conformity to the consummate impartiality of the technically perfect machine.

NOTES

1. In a presentation titled "Das Zeitalter der Neutralisierungen und Entpolitisierungen" in Barcelona in October 1929 [English: "The Age of Neutralizations and Depoliticizations," in *Telos*, no. 96 (Summer 1993), 130–42, translation by John P. McCormick], I developed in the context of a larger historico-intellectual setting the individual steps in the process of neutralization from the seventeenth to the twentieth century (that is, from theology to metaphysics; from this to humanitarian morality; from this by way of

economic and esthetic concepts to the absolute and total technical age). The presentation was published in *Europäische Revue* (November 1929), and in the second edition of my *Der Begriff des Politischen* (Munich, 1931). A French translation by William Gueydan de Roussel appeared in Paris in *L'Anné Politique française et étrangère* (December 1936).

2. John Neville Figgis, *The Divine Right of Kings*, 1st ed. (Cambridge, 1896; 2nd ed. 1934), p. 318: "The Leviathan exhibits true Erastianism in its most full-blown form." Figgis correctly points out, however, that for the excommunicating state Erastus invariably presupposes the true religion. Although McIlwain's excellent introduction to the edition of the *Political Works of James I* (Cambridge, Mass.: Harvard University Press, 1918) mentions Hobbes only occasionally (pp. xx, cii), his opposition to all religiously determined argumentation comes to the fore. A. Passerin d'Entrèves' utterance is from his book *Richard Hooker*, in *Memorie dell'Istituto Giuridico della R. Università di Torino*, Serie II, 22 (Turin, 1932), p. 129.

3. In the above mentioned introduction to the *Political Works of James I*, pp. xx ff., McIlwain mentions the conflict between the church (papal-presbyterian) "authority" and royal "authority"; in this connection, he also cites Pope Gelasius. The intrinsic peculiarity and difference of the concepts *auctoritas* and *potestas* is not sufficiently taken into consideration, I believe. The "spiritual power" is too lightly treated in this confusion. On the distinction between *auctoritas* and *potestas* cf. the essay by Georg D. Daskalakis, "Der Begriff des autarchischen Staates," in the periodical *Deutsche Rechtswissenschaft*, vol. 3 (1938), pp. 78ff. Bodin was still cognizant of the difference between *auctoritas* and *potestas*: his sovereign has *potestas* (*Six livres de la République*, III, ch. 7, pp. 365ff. of the 2nd ed. of 1580). Francisco J. Conde, *El Pensamiento Politico de Bodino* (Madrid, 1935), in ch. 2, p. 24, speaks about the *tecnicidad* in Bodin's conception of the state, yet fails to understand the machino-technical neutrality, only the kind of tolerance on which Bodin's *Heptaplomeres* is based. The interesting work by Conde reveals, however, how strongly in historical

reality tolerance and technical neutrality of the modern state can blend into one another.

4. Carl Schmitt, "Die Wendung zum diskriminierenden Kriegsbegriff," in *Schriften der Akademie für Deutsches Recht*, Gruppe Völkerrecht (Munich, 1938).

5. Hans Freyer, "Machiavelli und die Lehre vom Handeln," in *Zeitschrift für Deutsche Kulturphilosophie* (Neue Folge des Logos), vol. IV (1938), p. 118. Carl August Emge, "Ideen zu einer Philosophie des Führertums," in *Festschrift für Rudolf Stammler* (1936), p. 188.

Chapter V

Neither textually or etymologically, or in a conceptually systematic accuracy, or as a mainstream of ideo-historical logic has the last word on where the political fate of a mythical image resides been written. The name of the leviathan belongs to those mythical names that cannot be cited with impunity. His image is so powerful that even when it appears as a wall painting it creates a peculiar impact. The leviathan can unfold in unexpected historical situations and move in directions other than those plotted by its conjurer. Though the leviathan found its highest outward expression in the eighteenth century state of the absolute prince, his fate, however, was simultaneously consummated in that epoch by the success achieved in drawing distinctions between outer and inner. The question of faith and miracle became its misfortune.

Hobbes' leviathan, a combination of god and man, animal and machine, is the mortal god who brings to man peace and security. Because of this—and not on account of the "divine right of kings"—his leviathan demands unconditional obedience. There exists no right of resistance to him, neither by invoking a higher nor a different right, nor by invoking religious reasons and arguments. He alone punishes and rewards. Based on his sovereign power, he alone determines by law, in questions of justice, what is right and proper and, in matters pertaining to religious beliefs, what is truth and error. *Mensura Boni et Mali in omni Civitate est Lex* [The measure of good and evil in all states is the law (*Leviathan*, Chapter 46)]. But even much more: The sovereign state power alone, on the basis of its sovereignty, determines what subjects of the state have to believe to be a miracle.

As can be seen in a number of places in the *Leviathan* (at the end of Chapter 26 and in Chapters 37 and 42), Hobbes, the political philosopher of the state, was deeply stirred by problems associated with a belief in miracles. To him the notion of miracles was by no means only a fundamental theoretical question or a critical question involving knowledge of a general nature. In judging Hobbes' theory of miracles, one should not forget that at that time that question had a concrete, direct political meaning. The miraculous healing of illnesses through hand touching belonged to the province of the king. Healings were considered to be emanations and signs of the sacred character of the person of the king, who, as Hobbes stated "is more than a mere layman." In the struggle against the Roman pope, this institutional component of kingship had to be defended. For the English people miraculous healings remained for a long time an important contrivance of the monarchy. They were performed according to an official rite that was recorded in *The Book of Common Prayer*. The Stuarts, especially, and, above all, Charles II, to whom Hobbes was personally obliged, were engaged in the practice of royal miracle healings. During his exile as well as during the restoration, Charles II carried out many such healings; between May 1660 and September 1664, he touched with his royal hand approximately 23,000 persons.[1]

Hobbes' position on the especially sensitive question of the belief in miracles was entirely agnostical. He maintained that nobody can know for certain whether an occurrence is or is not a miracle. In articulating such a basic attitude, he became one of the first and most daring critics of every form of belief in miracles, irrespective of whether it was biblico-Christian or expressive of any other religion. His critique was thoroughly enlightened, and in propounding it, he appears as the true inaugurator of the eighteenth century. In a style almost reminiscent of Voltaire's, he explored the possibilities of error, delusion, and open or hidden deceit; the tricks of forgers, actors, ventriloquists, and other swindlers. He did this in a manner so vivid that in this domain every claim to credence seems to be senseless and no longer a subject appropriate for discussion. Critical readers of Chapter 37

of his *Leviathan* must conclude that a belief in miracles is invariably a superstition, at best a remnant of radical agnosticism which, in this respect, holds certain things as possible but none as true. Yet Hobbes, the great decisionist, here too accomplished his typically decisive turn: *Auctoritas, non Veritas*. Nothing here is true: everything here is command. A miracle is what the sovereign state authority commands its subjects to believe to be a miracle; but also—and here the irony is especially acute[2]—the reverse: Miracles cease when the state forbids them. The radical agnostic critique of a belief in miracles, the warnings of deception and swindle, cease when each sovereign ultimately decides for his state what constitutes a miracle. Hobbes used as an explicit example the great theological controversy that had raged since the Reformation—in fact, since the eleventh century—when the great schism between the Eastern and Western Church[3] governed the entire range of spiritual-political disputes of the European people: That which constituted for the Christian community, next to baptism, the most important sacrament, the sacrament of the altar and the communion of bread and wine, the miracle of transubstantiation of bread and wine into the flesh and blood of Christ. If, by means of certain spoken words an individual asserted that bread had been transformed into something entirely different, namely, the human body, then, says Hobbes, nobody would have a sensible reason to believe it; but if the power of a state decrees this to be so, then it is a miracle, and everyone has to obey this command to profess the belief because it was proclaimed by the sovereign state. In essence, whether something is to be considered a miracle is decided by the state in its capacity as the exemplar of the public reason in contrast to the private reason of subjects. Sovereign power has thus achieved its zenith. It is God's highest representative on earth. The power of the sovereign as the lieutenant of God is not confined to miracles, which are addressed at the very end of Chapter 37. The mortal god has power also over miracles as well as confession.

But at this place, at the zenith of the sovereign power that brings about the unity of religion and politics, occurs the rupture

of the otherwise so complete, so overpowering unity, the decisive point, concerning miracle and belief, that Hobbes evades. Concerning the question of the belief in miracles, he made his noneradicable, individualistic proviso in a way that renders any discussion of whether he was an "individualist" superfluous for our consideration. At this point enters the differentiation between inner faith and outer confession into the political system of the *Leviathan*. Hobbes declares the question of wonder and miracle to be a matter of "public" in contrast to "private" reason; but on the basis of universal freedom of thought—*quia cogitatio omnis libera est*—he leaves to the individual's private reason whether to believe or not to believe and to preserve his own *judicium* in his heart, *intra pectus suum*. But as soon as it comes to public confession of faith, private judgment ceases and the sovereign decides about the true and the false.

The distinction between private and public, faith and confession, *fides* and *confessio*, is introduced in a way from which everything else was logically derived in the century that ensued until the rise of the liberal constitutional state. The modern "neutral" state, derived from agnosticism and not from the religiosity of Protestant sectarians, originated at this point. If looked at from the perspective of constitutional history, a dual beginning was made here: first, the juristically (not theologically) constructed beginning of modern, individualistic right of freedom of thought and conscience and thereby the characteristic individual freedoms embodied in the structure of the liberal constitutional system; and, second, the evolution of the state from one inherently void of substantive truth into a justifiable external power, the *stato neutrale e agnostico* of the nineteenth and twentieth centuries. In one segment of his work (*Leviathan*, Chapter 42), Hobbes reinforced his conception of the state's right to demand "lip-service confession" of Christendom as well as the individual's right to observe his "inner faith" beyond any compulsory encumbrance. For scriptural verisimilitude Hobbes invokes a passage from the Bible (Kings II: 17–19), but, above all, he focuses attention on the distinction between inner and outer. Also, his answer to Bishop Bramhall

(1682) confirms that he has dealt with this sensitive point by underscoring the importance of absorbing the right of private freedom of thought and belief into the political system. This contained the seed of death that destroyed the mighty leviathan from within and brought about the end of the mortal god.

Only a few years after the appearance of the *Leviathan*, a liberal Jew noticed the barely visible crack in the theoretical justification of the sovereign state. In it he immediately recognized the telling inroad of modern liberalism, which would allow Hobbes' postulation of the relation between external and internal, public and private, to be inverted into its converse. Spinoza accomplished the inversion in the famous Chapter 19 of his *Tractatus Theologico-Politicus*, which appeared in 1670. Already in the subtitle of his book he speaks of the *libertas philosophandi*. He begins his exposition by maintaining that in the interest of external peace and external order, the sovereign state power can regulate the public religious cult and that every citizen must accommodate himself to this regulation. Everything that refers to religion receives its legal validity, *vim juris*, only through the command of the state's power. The state's power, however, determines only the external cult. Hobbes laid the groundwork for separating the internal from the external in the sections of the *Leviathan* that deal with a belief in miracles and confession. The Jewish philosopher pushed this incipient form to the limit of its development until the opposite was reached and the leviathan's vitality was sapped from within and life began to drain out of him. "I am speaking explicitly," says Spinoza, "only of the external cult, not of piety itself or of the internal worship of God." Inner conviction and "piety itself" belong to the private sphere of individuals. "Internus enim cultus et ipsa pietas uniuscujusque juris."

Spinoza expanded this thought in Chapter 20 of the *Tractatus Theologico-Politicus* into a universal principle of freedom of thought, perception, and expression, with the proviso that public peace and the rights of sovereign power would be respected. Spinoza's treatise is strongly dependent on Hobbes.[4] But the Englishman did not endeavor with such a proviso to appear out of context

of the beliefs of his people but, on the contrary, to remain within it, whereas the Jewish philosopher, on the other hand, who approached the religion of the state as an outsider, naturally provided a proviso that emanated from the outside. Hobbes focused on public peace and the right of sovereign power; individual freedom of thought was an implicit right open only as long as it remained private. Now it is the inverse: Individual freedom of thought is the form-giving principle, the necessities of public peace as well as the right of the sovereign power having been transformed into mere provisos. A small intellectual switch emanating from the nature of Jewish life accomplished, with the most simple logic and in the span of a few years, the decisive turn in the fate of the leviathan.

The development of the state in the eighteenth century brought an end to the idea of princely sovereignty, the *cujus regio, ejus religio*, and the classical form of the complete, indivisible absolutism of the state, a process that proceeded in the following fashion: The absolute power of the state, the sovereign-representative person, defeated the estates and the church and governed public events and the politico-historical stage while driving the invisible distinctions of outer and inner, public and private to an ever sharper separation and antithesis. Through Pufendorf and Christian Thomasius, Hobbes' theory emerged victorious on the continent, but only at the expense of the relationship between outer and inner which was reversed. The separation was recognized by Thomasius at the turn from the seventeenth to the eighteenth century, a theoretical leap that was to become folk wisdom in the following century.

In that connection, the "Thoughts of Thomasius" published in 1724 in German, are the most apt, because they convey Hobbes' and Spinoza's thoughts and, at the same time, as Bluntschli correctly stated, they constitute "the learned preparatory course for the state of Frederick the Great."[5] According to those "Thoughts," presented in the form of theses, the prince has no rights of coercion either in religious matters or in all those that are concerned with the "doing and imagination of the human intellect"; to be

sure he is not required to tolerate atheists and those who deny the existence of the creator and providence but only because it is anticipated that they will "disturb the peace of the common order." "Nobody should express a judgment that is different from what he thinks." Henceforth the state becomes essentially police which is restricted to maintaining "public" calm, security, and order.

Since Thomasius, the separation of right and morality has become a standard theory and a *communis opinio* of jurists and politicians. By contrasting juristic heteronomy and moral autonomy Kant, in his theory of right and the state, undertook to present a sanctioned summary of such views of the eighteenth century, which was meant perhaps to rebalance but not annul the fundamental separation between inner and outer, the state remaining, for the time being, rather intolerant. For example, Christian Wolff proposed the banning of pietists and opted for a strict censorship; Kant decisively rejected the right to resist. In retrospect, however, such variations are not decisive for the comprehensive development of constitutional law. What is of significance is the seed planted by Hobbes regarding his reservation about private belief and his distinction between inner belief and outer confession. As it unfolded, it became an irresistible and all-governing conviction.

The separation of inner from outer and public from private governed not only juristic thinking but also conformed to the general thinking of all educated people. The relegation of the state to an outward cult, as proposed by Spinoza, became the basic thesis of Goethe's Strasbourg dissertation dealing with the relation of church and state. Its content is related in *Dichtung und Wahrheit*, in which the Strasbourg period is recounted. According to the young Goethe, in strife the position of the church is always twofold: vis-à-vis the needs of the state and the freedoms of the individual. This difficult problem can be solved only when the lawgiver establishes the precepts of belief that had to be confessed publicly. What he underscored was that "the question should not arise about what a person privately thinks, feels, or senses." The absolute state can demand everything but only outwardly. The *cu-*

jus regio ejus religio has been realized, but the *religio* has in the meantime landed in an entirely different, unexpectedly new realm—namely, the private sphere of freedom of the free thinking, free feeling, and, in his disposition, absolutely free individual.

The advocates of such inner reservations advanced various arguments, some of which were opposed to one another, for example, secret societies and secret orders, Rosicrucians, freemasons, illuminates, mystics and pietists, all kinds of sectarians, the many "silent ones in the land," and, above all, the restless spirit of the Jew who knew how to exploit the situation best until the relation of public and private, deportment and disposition was turned upside down. In the eighteenth century it was Moses Mendelssohn who in his work *Jerusalem, A Treaty on Religious Power and Judaism* (1783) validated the distinction between inner and outer, morality and right, inner disposition and outer performance and demanded from the state freedom of thought; he was of no great mind, intellectually not comparable to Spinoza, but endowed with the unerring instinct for the undermining of state power that served to paralyze the alien and to emancipate his own Jewish folk.

Moses Mendelssohn's work was also the inducement for the publication of the first great and truly profound discussion of German wisdom and the Jewish tactic of drawing distinctions, namely, Johann Georg Hamann's *Golgatha und Scheblimini* (1784). The great, knowledgeable Hamann was aware of the meaning of leviathan and behemoth. He knew the leviathan to be a huge fish and a symbol of English character. Drawing on this knowledge, he characterized the moralistic bourgeois hypocrisy, the cant, as the "caviar of the leviathan" in contrast to the "Gallic paint" of cultural pretense. In reference to the state of Frederick the Great, he cited the passage from *The Book of Job* 40:18, that refers to the land animal behemoth. Demonstrating a sense of superiority over the conceptual skill of the enlightened Jew, he replied to him that state, religion, and freedom of conscience are three terms, words that signify everything and nothing and relate to other words "as the uncertainty of men to the certainty of ani-

mals." The behemoth is an animal to whom the poor and the dependent are thankful because the hounds of the great Nimrod leave them some crumbs. But, above all, what becomes clear here is what has become of Hobbes' leviathan: An externally all-powerful, internally powerless concentration of power that can only justify "forced duties because of the binding force of fear" and of which the Jew, Moses Mendelssohn, in great anticipation of success, demands that because everyone must become blessed in his own way, it (the leviathan) concern itself as little as possible with the inner disposition of an individual, just as little as God, in contrast, cares about the outward actions of man.

But when public power wants to be only public, when state and confession drive inner belief into the private domain, then the soul of a people betakes itself on the "secret road" that leads inward. Then grows the counterforce of silence and stillness. At precisely the moment when the distinction between inner and outer is recognized, the superiority of the inner over the outer and thereby that of the private over the public is resolved. Public power and force may be ever so completely and emphatically recognized and ever so loyally respected, but only as a public and only an external power, it is hollow and already dead from within. Such an earthly god has only the appearance and the *simulacra* of divinity on his side. Nothing divine lets itself be externally enforced. *Non externa cogunt Deos*, said in the presence of a Nero the stoic philosopher in the political situation of a Seneca. He who focuses on drawing distinctions between the internal and the external has, by elevating that intellectual device, conferred superiority on the internal (over the external), the invisible (over the visible), stillness (over the audible), and the other world (over this world). Although the superiority of the nonpublic can materialize in an infinite variety of ways, the end product—once the distinction is recognized—is not to be doubted. The humanist-rational superiority with which, for example, in Shakespeare's *Tempest*, the invisible Prospero in the fashion of an enlightened ruler reacts to Caliban's attacks of madness, is surely something different from the caution of a Rosicrucian who withdraws into his inner self and

exists *foris ut moris, intus ut libet* [from within as a habit, from without as it pleases]; something different from the credulous security of a pious Lutheran, as, for example, Paul Gerhardt, who believed that God gives the leviathan a respite and who, with Luther, "lets the fool rage"; again, totally different from the esoteric pride of the freemason who has been initiated into a higher order; and, once again, different from the ironic superiority of the romantic who hides behind the cover of his subjectivity. Each one of these exemplars has its own history, its own style, its own tactic. But as different as they were, as differently constituted as were the masonic lodges, conventicles, synagogues, and literary circles, as far as their political attitudes were concerned, they all displayed by the eighteenth century their enmity toward the leviathan elevated to a symbol of state.

All those multifarious, countless, and indestructible reservations regarding inner vis-à-vis outer, invisible vis-à-vis visible, conviction vis-à-vis attitude, private vis-à-vis public, stillness vis-à-vis noise, esoteric vis-à-vis ordinary united themselves, without any plan or organization, into a front that did not need to exert any great effort to transform the positively understood myth of the leviathan. All the mythical forces embodied in the image of leviathan now strike back at the state that Hobbes had symbolized. For the pious reader of the Bible, the leviathan remained a horror; for the Puritan, a sign of bold idolatry. For every good Christian it became a dread-provoking image to see a great animal juxtaposed to the *Corpus mysticum* of the man-god, the great Christ. For centuries the Jew was fortified in his feeling of superiority vis-à-vis the heathens and the bestial idolizing of their will to power by the interpretation of the image of the leviathan that had been made by rabbis and cabbalists. Although the enlightened humanitarian could conceive of and admire the state as a work of art, the symbol of the leviathan as applied to the state appeared to his classical taste and sentimental feeling as a bestiality or as a machine turned into a Moloch that lost all the powers of a sensible myth and at first represented an externally driven lifeless "mechanism" and then an animate "organism" of a political contrast, an

organism driven from within. When a widespread romantic feeling began to perceive in the image of the "state" a plant, a growing tree, or even a flower, the image generated by Hobbes began to be perceived as downright grotesque. The new symbol left nothing to remind people of a "huge man" and a god created by human reason. The leviathan assumed an inhuman or a subhuman appearance which led to a secondary question that need not be answered, namely, whether the perceived inhumanity and subhumanity represented an organism or a mechanism, an animal or an apparatus.

NOTES

1. Marc Bloch, *Les rois thaumaturges, Etudes sur le caractère surnaturel attribué à la puissance royale particulièrement en France et en Angleterre* (Paris, 1924), p. 377; reproduced here is also an impressive depiction from J. Brownes' *Charisma Basilikon* (1684) of how Charles II healed scrofula by a touch of hands. Further, Percy Ernst Schramm, *Geschichte des englischen Königtums im Lichte der Krönung* (Weimar, 1937), pp. 125, 132. Schramm considers the belief in such powers of the kings to be basically a "very unchristian conception," one that was a positive counterpart to the medieval belief in sorcery and seemingly of German origin.

2. And so the inscription of the classical distich by Saint-Médard:

> De par le Roi défense à Dieu
> De faire miracle en ce lieu.

3. Gerhard Ladner, "Theologie und Politik vor dem Investiturstreit (Abendmahlstreit, Kirchenreform Cluny und Heinrich III)," in *Veröffentlichungen des österreichischen Instituts für Geschichtsforschung*, ed. Hans Hirsch, vol. II (1936), p. 25: "Difficult problems within the sacramental dogma arose at the same time (11th century) as the Church, with unprecedented intensity,

began to challenge the peculiar entwining of the spirit of Christianity with the spirit of secular reality that ensued in the West in consequence of an autonomous reform based on a new jurisprudential point of view; this was a step not followed by the Greek Orthodox Church and, therefore, became totally ensnared by Caesaro-papism." In addition, Ladner correctly points out that ever since the eleventh century the Roman papacy forged a new legal system, destructive to the German empire, and the struggle over the relationship between the temporal and the spiritual was conceived as a legal dispute as well as a sacramental conflict (pp. 46–47).

4. Two remarks of Hobbes to Spinoza's treatise are preserved. One is directed at Lord Devonshire: "Ne judicate, ne judicemini" [Do not judge, lest you will be judged]; the other at Aubrey: "he had cut through him a barre's length," because he himself did not dare to write so boldly. Tönnies (*Thomas Hobbes, Leben und Lehre*, 3rd ed. [1925], p. 286, n. 60) thus concludes that Hobbes had rediscovered in Spinoza's book "if not his very own teaching, then at least his very own belief." Spinoza certainly appropriated essentials from Hobbes and Hobbes naturally noticed it. But his somewhat oracle-like words contain also a little more than a mere accord. John Laird, *Hobbes* (London, 1934), pp. 300–303, sees the difference between Hobbes and Spinoza above all in the latter's "naked Machiavellism" and in his lack of any "appreciation of duty."

5. Johann Caspar Bluntschli, *Geschichte des Allgemeinen Staatsrechts und der Politik* (1864), p. 192. On the fact that Frederick the Great's theoretical conception of state stemmed more from Hobbes than from Locke, see Gisbert Beyerhaus, *Friedrich der Grosse und das 18. Jahrhundert* (Bonn, 1931), p. 11.

Chapter VI

In the eighteenth century the leviathan as *magnus homo*, as the godlike sovereign person of the state, was destroyed from within. The distinction of inner and outer became for the mortal god a sickness unto death. But his work, the state, survived him in the form of a well-organized executive, army, and police as well as administrative and judicial apparatuses and a well-working, professionally trained bureaucracy. To an increasing extent the state was perceived as a mechanism and a machine. As that perception became widespread so did the development of the concepts of right and law. Because the state of the absolute prince was bound by virtue of law, and transformed from a power-and-police state into a "constitutional state" [*Rechtsstaat*], law, too, changed and became a technical means to tame the leviathan, to "'put a hook into the nose' of the Leviathan."[1] It became a technical instrument that was intended to make calculable the administration of state power. General legalization is the main feature of this development, and the state itself changes into a positivist system of legality. The *legislator humanus* became a *machina legislatoria*. As a result of the impact of the French Revolution, the legitimacy of the divine-right monarchy was stripped of all political power. It became an institution of historical right. The restored legitimate monarch withdrew from the *potestas* into the *auctoritas*. What has passed for the "dynastic principle of legitimacy" since the 1815 Congress of Vienna has its solid foundation in the legality of the state's officialdom and army. Everything else is historical nimbus and residue still used by social forces and powers to legitimize their own power. A "restored" legitimacy is but only a fool's paradise.

In the states on the European continent, the eighteenth-century absolute state ruled by princes was replaced by the nineteenth-century bourgeois constitutional state. Hidden here under the name "constitutional state" is a legal system that is based on a "constitution" made by men, one that operates with written laws, especially codified laws. In reality, the bourgeois constitutional state is a state based on law. "What the countries on the European continent have understood to be a constitutional state since the nineteenth century is in reality a lawgiving state. The justification of such a state lies in the general legality of all its expressions of state authority. A closed legal system establishes the claim to obedience and justifies the elimination of every right to resistance. The specific manifestation of right is law; the specific justification of state coercion is legality."[2] According to Max Weber, in the rationalized enterprise of the modern state, "legality can pass for legitimacy." In conformity with this prognosis, the future belongs to the intelligent, professionally trained bureaucracy because it is the actual carrier of the thoroughly technologized plant called "state" that operates according to an inner rational logic in compliance with legal norms. Legality is the positivistic mode of operation of the bureaucracy. The modern state and legality, therefore, belong essentially together. As Otto von Schweinichen aptly remarked, the so-called constitutional state is a state based on law because the historically concrete order, state, links itself with "right," transforming it into the "law" of the state. Using chemical or physical terms, he stated that the state reacts to the element "right" only when it appears in the aggregate of a state's legality. The problem of legality thus does not permit the issue to be cast as a "merely formal," juristic, behind-the-scenes question or one of etiquette. In a modern, organized state, correctly understood and correctly managed legality is a reality of the first order, because powerful forces such as the bureaucracy and officialdom need legality as a mode of operation. Through its technical perfection the machine actually becomes an autonomous legal force that does not allow itself to be arbitrarily managed by just anybody, because it is based on laws that must be respected if it is to

be a dependable servant. The admirably perfected armature of a modern state and the complicated command mechanism of its administrative apparatus—the result of incredible technical inventions—require a specific rationality, a form of command, and a plan expertly formulated and executed, signifying the transformation of legitimacy into legality and the divine, natural, or other prestate right into positive state law.

Long before the realization of this great legalistic *machina machinarum* and long before the term "legal positivism" had been coined, Hobbes conceptualized the transformation of right into a positive legal command. He did that so thoroughly in connection with the transformation of the state into a mechanism driven by compulsory psychological motivations that his formulation undermined not only all medieval conceptions of the "divine right of kings," but also all other substantive concepts of right and constitution. He became thereby in a twofold manner a spiritual forefather of the bourgeois law-and-constitutional state that materialized in the nineteenth century on the continent of Europe.

Let us look at the constitutional concept that apprehends the law-and-constitutional state as a system of legality based on a resolution of a constituent, that is, a constitutional assembly. At this point I must make up for a distinction that I (as well as other theorists of constitutional law and constitutional history) failed to note before. I neglected to take into sufficient account an important observation made by Ferdinand Tönnies in 1926. He called attention to the fact that the contractual justification for the state in Hobbes' *Leviathan* differs essentially from the medieval conceptions of covenants. Whereas all medieval theories of every commonwealth endeavored to justify the covenant as a "constitutional state," Hobbes, on the other hand, objectively and scientifically neutral, considered every state to be a human product based on a covenant of all with all. In *Leviathan*, Chapter 18, within the general and value-neutral concept of the "state," he then differentiated a particular kind of "established" or "institutionalized" state (commonwealth by institution) that, in reality, could also be characterized "constitutionally" as a law-and-constitutional state. The

institutionalized or "constitutional" state is an organized state that has come about by the resolution of a "multitude of men," that is, by a "constituent national assembly." According to Hobbes, every state is founded on a covenant; every state is also a constitutional state because within the confines of a state extralegal laws or laws aimed against the state cannot exist; only a state established by such a constituent national assembly is constitutionally a law-and-constitutional state. According to Tönnies: "When the multitude is replaced by a nation" (he adds that the indifferent multitude certainly remains characteristic) "I call it a constituent national assembly. Through Rousseau's mediation, the theory of Hobbes, in this form, influenced the beginnings of the great revolution in France. Rousseau changed it only to the extent that he did not consider any constitution, that is, any form of state, to be definitive. The periodic revival of the national convention as an eternal natural right (*Naturrecht*) was to him a natural occurrence; in other words, he allowed for the incorporation of the Revolution, as it were, into the configuration of the state. Hobbes, on the other hand, asserted the necessity to deny and negate the state of nature in the true and perfect *status civilis*."

Tönnies' observations are correct. I would add only that the technologizing neutralization that resides in the general neutrality tinged construct of state already contains in it the technologization and neutralization of right into law and constitution into constitutional law. As described above (Chapter 4, p. 45), law became a means of compulsory psychological motivation and calculable functioning that can serve different aims and contradictory contents. That is why, according to Hobbes, every legally calculable functioning compulsory system is a state and insofar as there can only be state law, the state is also a constitutional state. The process of formalizing and neutralizing the concept of the "constitutional state" into a calculable functioning legal system of the state indifferent to aims, intrinsic truths, and justice is known by the name of "legal positivism" and had become in the nineteenth century the generally dominant juristic doctrine. The embarrassment of bourgeois constitutional jurists was therefore great when between the

years 1917 and 1920, a bolshevist state apparatus was constructed and insofar as it functioned according to calculable means, could claim for itself the name "constitutional state."[3]

The nineteenth-century Jewish philosopher, Friedrich Julius Stahl-Jolson immediately recognized and utilized the gap. He compromised the concept of the by no means neutral constitutional state concept of the German liberals—for example, Robert Mohl's—and proclaimed the "juristically" evident, what came to be considered the generally acceptable definition of the constitutional state: "The *Rechtsstaat* does not at all mean the aim and content of a state but only the realization of its type and character." The new distinction between content and form, aim and character, as the eighteenth century had developed contrast between inner and outer, thus secured legal justification. Stahl-Jolson, who brought this about, boasts therefore what is understandable from his standpoint, the distinction between morality and right as advanced by Christian Thomasius, which he characterizes as "substantial progress," made by a theorist who "secured forever the separation of both" so that "inner and outer peace, the enforceability of right and nonenforceability of ethics could be demarcated in all respects." This strange champion of the divine right of Christian kings established that Hobbes, in contrast to Grotius, differentiated the state not only from the prince but also from the people.[4] What a formulation of "conservatism"! Imagine what Hamann, who called Spinoza's manner of philosophizing "incompetent and unauthorized," would have said about such an apologist of Christian monarchy! Using many beautiful words to justify the "Christian state" and antirevolutionary "legitimacy," the Jewish philosopher, with a sure goal and instinct, extended the line drawn by Spinoza and advanced by Moses Mendelssohn.

In contrast to Spinoza, who lived like a solitary individual, apart from the public who knew little or nothing about him, Moses Mendelssohn belonged to the still modest but in no way unimportant Berlin "society"; he had found a place on the public literary stage, and he was well known, even famous, among his educated contemporaries. Since the Congress of Vienna, the first

generation of emancipated younger Jews broke into the mainstream of European nations. The young Rothschilds, Karl Marx, Börne, Heine, Meyerbeer, and many others occupied, each in his circle of activity, places in the fields of economics, journalism, the arts, and science. Stahl-Jolson was the boldest in this Jewish front. He penetrated the Prussian state and the Evangelical church. The Christian baptismal sacrament provided him with not only a "ticket of entry" into "society," as was the case with the young Heine, but with an identity card that admitted him to the sanctuary of the still respectable German state. From high governmental positions he was able to confuse ideologically and paralyze spiritually the core of this commonwealth, kingship, nobility, and the Evangelical church. He knew how to convey to Prussian conservatives and to the king the necessity to designate "constitutional" kingship as the salvation from parliamentary monarchy. He thus focused on the inner political enemy, namely "constitutionalism" upon which the Prussian military state collapsed in October 1918 under the strain of World War I. Stahl-Jolson, in accordance with the line developed by his people, used a deceitful manner to mask his motivation, which became all the more horrible the more desperate he became to be somebody other than he actually was. Ultimately, of course, what transpired in his soul or in his consciousness is inaccessible to us,[5] and of no consequence for the overall course of this political reality. But in the great historical continuum that leads from Spinoza by way of Moses Mendelssohn into the century of "constitutionalism," Stahl-Jolson did his work as a Jewish thinker—that is, he did his part in castrating a leviathan that had been full of vitality.

Directly linked with the transformation of the jurisprudential concept of the constitutional state formulated by Hobbes is the transformation of the concept of law. Law became decision and command in the sense of a psychologically calculable compulsory motivation. Speaking in Max Weber's language, it became the "chance of enforcing obedience." The typical law of such a compulsory order is criminal law, the *lex mere poenalis*, and the order thus obtained through such a law is a *mere ordo poenalis*. The

specific assurances that the bourgeois constitutional state continues to strive for already flow from the elimination of content from the notion of truth and justice and from the positivistic alienation of the norm. As a coercive threat, the law, for example, can have no retroactive force. Hobbes, in fact, declared *post-factum* laws not to be binding (*Leviathan*, Chapter 27). The result in Hobbes was thus the same as it was in Locke, who, praised as the true father of the liberal constitutional state, precisely in this context combats, in a most lively manner, *post-factum* laws. Also, in adjudicating other questions, for example, the sentence *nullum crimen sine lege* [no crime without law] the outcome was remarkable. Nevertheless, mostly as a result of the work of Ferdinand Tönnies, the constitutional elements of Hobbes' theory were developed, and he is recognized as a foremost theorist of the "positive constitutional state."[6] Notwithstanding that designation, Hobbes was for centuries regarded as the notorious representative of the absolute "power state," the image of the leviathan having been distorted to be a horrible Golem or Moloch. It still serves today as the prototype of what western democracy perceives to be a polemical horror picture of a "totalitarian" state and of "totalism."[7] The specific law-state elements of Hobbes' theory of state and jurisprudence were almost always misjudged, and objections were raised against his formulations, which, if valid, would have turned his doctrine into an absurdity. For example, Hobbes' theory of the state would certainly have been a peculiar philosophy of state if its entire chain of thought had consisted only of propelling poor human beings from the utter fear of the state of nature only into the similarly total fear of a dominion by a Moloch or by a Golem. Locke raised this objection when he remarked that according to Hobbes, men, because of their fear of cats and foxes, consider it safe to be devoured by a lion.[8] But this objection is not pertinent.

For Hobbes it was relevant for the state to overcome the anarchy of the feudal estates' and the church's right of resistance as well as the incessant outbreak of civil war arising from those struggles by confronting medieval pluralism, that is, power claimed by the churches and other "indirect" authorities, with the

rational unity of an unequivocal, effective authority that can assure protection and a calculable, functioning legal system. To such a rational state power belongs the assumption of total political responsibility regarding danger and, in this sense, responsibility for protecting the subjects of the state. If protection ceases, the state too ceases, and every obligation to obey ceases. The individual then wins back his "natural" freedom. The "relation between protection and obedience" is the cardinal point of Hobbes' construction of state. It permits a very good reconciliation with the concepts and ideals of the bourgeois constitutional state.

The youthful author of the *Anti-Hobbes*, which appeared in 1798, reconciled this matter easily. This work, written by the young Anselm Feuerbach, has the subtitle: *Or On the Limits of the Highest Authority and the Right of Coercion of Citizens Against the Sovereign*. Actually he speaks more of Kant and other contemporaries than of Hobbes, whose name had already become by then a symbol of state absolutism. I cannot say why the work is titled *Anti-Hobbes* and not *Anti-Leviathan*. Perhaps Feuerbach's title was intended to be sensational. "This title will focus attention on me and on my book," he wrote in his diary on 27 July 1797. "I will be read and praised. On this account I will face great dangers. The political inquisition will extend their claws in my direction. But I will defy them. Courage, Feuerbach, courage, heroic courage!"[9] One sees what has become of Hobbes' name.

When Feuerbach's anti-Hobbes asserted that unconditional obedience is an absurdity and illustrated that contention with the example that no command can order that a square be held to be a circle or that the sea cucumbers of the Egyptians be considered divinities, those assertions need not be contrasts to those made by Hobbes but could be expressions made by Hobbes himself. Of much greater significance is the fact that the author of *Anti-Hobbes*, who wrote a book on criminal law, made criminal law into what Hobbes sees in it— namely, a means of compulsorily influencing the psychological motivation of men. By postulating the oft-cited "general theory of prevention of psychological coercion," the typical law-state formula regarding criminal law,

namely, "no punishment, no crime without law," *nulla poena, nullum crimen sine lege*, prevailed. But, in truth, this was only one application of legal concepts advanced by Hobbes. The formula, including its linguistic character, goes back to Hobbes. Hobbes did not state it accidentally as an aphorism; he referred to it in the appropriate place as a carefully thought through concept in the context of a systematic legal and political philosophy (*Leviathan*, Chapter 27): "*Ubi lex non est, Peccatum non est. Cessantibus Legibus Civilibus cessant Crimina. Ubi vero Lege vel Consuetudine poena limitatur, ibi majoris poenae inflictio iniqua est*"[10] [Where law ceaseth, Sinne ceaseth. . . . Civill Law ceasing, Crime cease. . . . Truly, where law or custom limits punishment, there an imposition of greater penalty is unjust].

Anselm Feuerbach is regarded as the "father of modern criminology." But his concepts of crime and punishment reside within the framework of the juristic conceptual system advanced by Hobbes. If J. G. Hamann could say in reference to Frederick the Great that the "anti-Machiavelli" ended as a "meta-Machiavelli," it can also be said that the "Anti-Hobbes" revealed himself as a "pure" Hobbes.

In this fashion Hobbes' thought prevailed in the positivist law state of the nineteenth century, but only in a rather apocryphal manner. The old adversaries, the "indirect" powers of the church and of interest groups, reappeared in that century as modern political parties, trade unions, social organizations, in a word as "forces of society." They seized the legislative arm of parliament and the law state and thought they had placed the leviathan in harness. Their ascendancy was facilitated by a constitutional system that enshrined a catalogue of individual rights. The "private" sphere was thus withdrawn from the state and handed over to the "free," that is, uncontrolled and invisible forces of "society." Those mutually entirely heterogeneous forces formed the political party system whose essential core, as J. N. Figgis identified perceptively, was composed of churches and trade unions. From the duality of state and state-free society arose a social pluralism in which the "indirect powers" could celebrate effortless triumphs. "Indirect"

used here means not at its own risk but—to cite the pertinent term of Jacob Burckhardt—"by previously ill-treated and humiliated temporal powers." It is in the interest of an indirect power to veil the unequivocal relationship between state command and political danger, power and responsibility, protection and obedience, and the fact that the absence of responsibility associated with indirect rule allows the indirect powers to enjoy all the advantages and suffer none of the risks entailed in the possession of political power. Furthermore, this typically indirect method *à deux mains* enables them to carry out their actions under the guise of something other than politics—namely, religion, culture, economy, or private matter—and still derive all the advantages of state. They were thus able to combat the leviathan and still avail themselves of the animal until they destroyed the big machine.

The wonderful armature of a modern state organization requires uniformity of will and uniformity of spirit. When a variety of different spirits quarrel with one another and shake up the armature, the machine and its system of legality will soon break down. The institutions and concepts of liberalism, on which the positivist law state rested, became weapons and power positions in the hands of the most illiberal forces. In this fashion, party pluralism has perpetrated the destruction of the state by using methods inherent in the liberal law state. The leviathan, in the sense of a myth of the state as the "huge machine," collapsed when a distinction was drawn between the state and individual freedom. That happened when the organizations of individual freedom were used like knives by anti-individualistic forces to cut up the leviathan and divide his flesh among themselves. Thus did the mortal god die for the second lime.

NOTES

1. On Marsilio of Padua's concept "legislator humanus" that is used in the text, see John Neville Figgis, *The Divine Right of Kings*, 1st ed. (Cambridge, 1896; 2nd ed. 1934), p. 114; that this

concept is still medieval, see A. Passerin d'Entrèves, "Rileggendo il Defensor Pacis," in *Rivista Storica Italiana*, IV, 1 (1934).

2. *Legalität und Legitimität* (Munich: Duncker & Humblot, 1932), pp. 7–8; note also the citations there by Max Weber. On Otto von Schweinichen's remark cf. the *Disputation über den Rechtsstaat* (Hamburg, 1935).

3. Cf. Carl Schmitt, *Verfassungslehre* (1928), p. 138.

4. Friedrich Julius Stahl-Jolson, *Geschichte der Rechtsphilosophie*, I (vol. I of the *Philosophie des Rechts* in the 2nd ed. of 1847), pp. 122–23, 179–80 (on Thomasius); on Hobbes, *Geschichte der Rechtsphilosophie*, p. 175. On the name "Jolson" I would like to take this opportunity to refer to the Marburg dissertation by Oskar Voigt, *Werdegang und Wirksamkeit Friedrich Julius Stahls in Bayern bis zu seiner Berufung nach Berlin 1840* (handwritten; Marburg, 1919). On pages 12, 23, and 26 of that manuscript are found expositions that impelled me to use the spelling "Jolson" (instead of "Golson"), and to continue to use it. Nevertheless, the important work of Voigt, as well as the papers of Stahl-Jolson kept in Wolfenbüttel appear to have been little used until now.

5. Stahl-Jolson's nephew, the high school teacher Stahl from Giessen, burned all the letters of his uncle "on account of their illegibility." Likewise, Stahl-Jolson's wife, who was of German descent, burned all his letters and nonscholarly papers after the death of her husband. Among his personal papers, in Wolfenbüttel, I found a letter dated 16 February 1872 by Anna Homeyer to Wilkens, who planned to write a biography of Stahl-Jolson, according to which Mrs. Stahl-Jolson did not wish to make public the "inner, hidden life" of her husband; "moreover, she was unable to come to terms with the fact that he was an Israelite." I was besmirched on account of my remark that "I am unable to take a peek into the soul of Stahl-Jolson" (cf. *Deutsche Juristen-Zeitung* [1936], p. 1197), but I was never asked how I arrived at such an observation. This note is appended for the benefit of those who may have a pertinent interest in this matter.

6. Gustav Adolf Walz, "Wesen des Völkerrechts und Kritik der Völkerrechtsleugner," in *Handbuch des Völkerrechts*, I, 1 (Stuttgart, 1930), p. 9: "Hobbes is basically interested in presenting a rational theory of a positivist constitutional state, one entirely free from political dogmas." The individualism of the construction of the covenant was emphasized by Franz W. Jerusalem in *Der Staat* (1935), p. 179 (*Soziologie des Rechts*, I [1925], pp. 197, 282).

7. Joseph Vialatoux, professor at the Institution des Chartreux at Lyons, renowned for his numerous economic and sociophilosophical writings, recently published a treatise on Hobbes (*La Cité de Hobbes; Théorie de l'État totalitaire, Essai sur la conception naturaliste de la civilisation* [Paris-Lyon, 1935] in which he elevates him into a philosopher and church father of present-day "totalism," and attempts to show a connection between Hobbes' "naturalism" and concepts of the sociologists Comte and Durkheim, as well as between the thought of Hobbes and communist socialism and imperialism, notwithstanding his individualistic starting point. Many things have made the matter easy for the French Catholic; on Hobbes' part, above all, the much-used, horrible image of his all-devouring leviathan. Conversely, he benefited from the ambiguity of the catchword "total," which can have an infinite number of meanings: some form of claim to or sweeping destruction of individual freedom, as well as some, basically only relative, changes in the traditional limitations of the scope of civil liberties, centralization, the transformation of the traditional constitutional conception of the notion of "the separation of power," the suspension of earlier separations and distinctions, totality as aim and totality as means, and so on. (Cf., in this respect, the splendid essays by Georg D. Daskalakis, "Der totale Staat als Moment des Staates," in *Archiv für Rechts- und Sozialphilosophie*, vol. XXXI [1938], p. 194, and "Der Begriff des autarchischen Staates," in *Deutsche Rechtswissenschaft*, vol. 3 [1938], pp. 76ff.). In contrast to Vialatoux, the distinguished French professor of public law René Capitant, in his essay "Hobbes et l'État totalitaire" (*Archives de Philosophie du droit et de Sociologie ju-*

ridique, nos. 1–2 [1936], p. 46), points to the individualistic character of Hobbes' construction of state. But Capitant also concedes that the use of the famous image of leviathan, the monstrous creature from a fable, can make Hobbes appear a "mystical totalist."

8. *Civil Government*, II, 93 [not 493]. Although Hobbes' name is not mentioned here explicitly, it is obvious that this inference is directed at him.

9. *Nachlass*, ed. Ludwig Feuerbach (Leipzig, 1853), p. 38. The facsimile of this page is included in the biography of Feuerbach by Gustav Radbruch (1934).

10. The knowledgeable and meritorious dissertation by Herbert Hennings, *Die Entstehungsgeschichte des Satzes "Nulla poena sine lege"* (Göttingen, 1933), written under the mentorship of Friedrich Schaffstein, traces this sentence from the perspective of constitutional history to the Magna Carta, from the perspective of constitutional theory to Locke and especially to Montesquieu, and from the perspective of criminal law to Feuerbach and his doctrine of psychological coercion. Hobbes and his decisive Chapter 27 of the *Leviathan* were passed over, although the latter and Chapter 28 are mentioned on p. 87. On Feuerbach as the "father of the modern science of criminal law" see F. von Hippel, *Deutsches Strafrecht*, I (1925), pp. 292ff. and Edmund Mezger, *Strafrecht* (1931), p. 20.

Chapter VII

Hobbes' important theory of the state did not materialize in England and among the English people but on the European continent by the land powers. It found its manifestation in the French and Prussian states that were in many respects distinct expressions of classical perfection. The English people decided against such a state. For several years in the middle of the seventeenth century, it appeared as if Cromwell's dictatorship would lead England to become both a centralized state and a great sea power. The image of the sea monster leviathan as a symbol of the English state held for a brief historical moment, and it is a curious coincidence that the *Leviathan* appeared in 1651, the year in which the Acts of Navigation were published. But the domestic political configuration of the English commonwealth was not forged by Cromwell. The image of the leviathan in Hobbes' concept of the state in England had become attached since 1660 to monarchical absolutism and thus to the Stuarts. In other words, it belonged to a politics that, with the aid of the landed nobility, could have realized on the English soil the continental—that is, the Spanish-French, doctrine of the state—but was instead defeated by the more powerful and for the English nation more suitable might of the sea and of commerce. Those forces, which were decisive in turning toward parliament and against the king during the Presbyterian revolution, were incorrectly characterized by Hobbes, who used the form of the opposite image, namely, the land animal behemoth. The energies of sea power stood on the side of the revolution. The English nation became its master and grew into the position of a world power without using the forms and means of state absolutism. The English leviathan did not become a state.

The image of a big sea animal would perhaps have been better suited to become a symbol of a world-ruling sea power than would, for example, a land animal such as the lion. An often-cited old English prophecy of the twelfth century says: "The young of a lion will be transformed into a fish of the sea." But Hobbes' leviathan has, however, taken the opposite direction: A big fish became a symbol connected with the typical continental process of state building of European land powers. The English Isle and its world-conquering seafaring needed no absolute monarchy, no standing land army, no state bureaucracy, no legal system of a law state such as became characteristic of continental states. Drawing on the political instinct of a sea and commercial power, a power that possessed a strong fleet that it used to acquire a world empire, the English people withdrew from this kind of closed state and remained "open."

The decisionism of absolutist thinking is foreign to the English spirit. The concept of the sovereignty of the absolute state in a conceptually "clean" form, that is, one that shuns mixing and balancing with other state forms, has found no echo in the public power of England. The English constitution, on the contrary, was elevated to an ideal example of a "mixed constitution," a "mixed government." Instead of cabinet- and combat-determined notions of land warfare waged by absolute states on the continent, this sea power developed a concept of enemy that had been derived from sea and trade wars, namely, the concept of a nonstate enemy that does not distinguish between combatants and noncombatants and hence is truly "total."

The evolution of England proceeded in a direction contrary to the concept of the state advanced by Hobbes not only in respect to government, law, and war but also, in respect to the connection between the state and state-ordered confession. Hobbes' way out of the religious civil war contradicted English notions about religious freedom. The content of Hobbes' concept was regarded as despotism. Furthermore, its method was judged to be Machiavellism and thus was rejected with innermost aversion.

Hobbes' theory of the state was thus perceived by his own people as an unnatural deviation and his image of the leviathan was

regarded as the symbol of a monstrosity. What could have been a grand signal of restoration of the vital energy and political unity, began to be perceived in a ghostly light and became a grotesque horror picture. Moreover, on the continent too it was unable to attain the nonproblematic immediacy that such images require in order to achieve the proper effect. There, where Hobbes' state was realized the most, his symbol of the leviathan ran aground. The sea animal was not an adequate image of the developing typical territorial power configurations of European military land powers. The transmitted interpretations of the images from the Hebrew Bible were more effective than was the endeavor of a restoration. Without a great effort the beginning of a new myth could thus be soon destroyed.

When an author employs an image like that of the leviathan, he enters a domain in which word and language are no mere counters that can be used to calculate worth and purchasing power. In this domain mere "values" do not "hold true"; what effectively govern are force and power, throne and master. The greatest philosopher of the German east, Johann Georg Hamann, knowledgeable about word and language, said with regard to Kant: The distance "from transcendental ideas to demonology is not great." Kant would surely not have dared, even if for reasons of taste, to conjure an image like that of the leviathan, and if Hamann's observation is valid with respect to Kant, then it is even more appropriate to a seventeenth-century philosopher who had the courage to see the unity of political commonwealth in the image of a powerful monster that combined god, man, animal, and machine. Hobbes used this image because he considered it to be an impressive symbol. He failed to realize, however, that in using this symbol he was conjuring up the invisible forces of an old, ambiguous myth. His work was overshadowed by the leviathan, and all his clear intellectual constructions and arguments were overcome in the vortex created by the symbol he conjured up. No clear chain of thought can stand up against the force of genuine, mythical images. There is only one question that such myths elicit, and that is: Does its path in the overall march of political destiny develop into good or

evil, right or wrong? Whoever utilizes such images, easily glides into the role of a magician who summons forces that cannot be matched by his arm, his eye, or any other measure of his human ability. He runs the risk that instead of encountering an ally he will meet a heartless demon who will deliver him into the hands of his enemies.

Such was indeed the case with the leviathan conjured up by Hobbes. That image was inadequate to the system of thought to which it was applied in historical reality and it perished as a result of its encounter with the forces arrayed behind the traditional Jewish interpretation of the leviathan. All the indirect powers who are usually hostile to one another were suddenly in agreement and coalesced to "catch the huge whale." They have killed and eviscerated him.

The mythical image created by Hobbes thus came to an end. I do not believe that the leviathan could become a symbol of a new, pure, and open technical age, perhaps in the sense of totality that Ernst Jünger ascribes to technology and its impact on planetary changes. The unity of god, man, animal, and machine that the leviathan of Hobbes represents would certainly be the most total of all totalities that human beings are capable of apprehending. Nevertheless, the image of an all-powerful animal taken from the Hebrew Bible that had been rendered harmless would not convey an intelligible symbol for a totality produced by a modern technology. On the thought processes of total technology the leviathan can no longer make a sinister impression. It trusts itself to be able to place him, like other saurian and mastodons, under protection in a preserve and display him as a museum curiosity in a zoo.

The tragedy of the fate of this famous symbol corresponds to the tragedy of the life and activity of that lonely philosopher from Malmesbury, notwithstanding his worldly wisdom and sociability. As a loyal Englishman, he firmly believed that the king was a representative of God on earth, the "lieutenant of God," and "more than a mere layman." He used the medieval concepts, which belonged to the German emperor and were taken from him by the pope,[1] and spoke of his leviathan, following the same formula that

the Maid of Orlèans used to speak of her king. But by making the monarchy into a mere form of a state's legal system, Hobbes destroyed its traditional and legitimate foundations for asserting divine right. He could rescue his monarchical belief only by withdrawing into a fundamental agnosticism. That was the basis from which his piety sprang, for I believe that with Hobbes it was a genuine piety. But his thinking was no longer trusted, and every bawler could thus label him an "atheist," and every denouncer could cast suspicion on him until his name came to be dishonored.

In the struggle that the English nation waged against the papal church's and the Jesuits' claims to world hegemony, Hobbes stood bravely at the head of his people. Nobody refuted Bellarmine better than he. But the English people could not understand his concept of the state, and a nineteenth-century Jewish philosopher of legitimacy could praise him for having distinguished the state not only from the prince but also from the people. He was the revolutionary pioneer of a scientific-positivistic era, but because he belonged to a Christian people, he remained as a "*vir probus*" [upright man] committed to the proposition that "Jesus is Christ," a commitment that led both, the enlightened and believers, to regard him as a hypocrite and a liar. Drawing on his uprightness and his brave intellect, he restored the old and eternal relationships between protection and obedience, command and the assumption of emergency action, power and responsibility against distinctions and pseudoconcepts of a *potestas indirecta* that demands obedience without being able to protect, that wants to command without assuming responsibility for the possibility of political peril, and exercise power by way of indirect powers on which it devolves responsibility. Although Hobbes defended the natural unity of spiritual and secular power, he opened the door for a contrast to emerge because of religious reservation regarding private belief and thus paved the way for new, more dangerous kinds and forms of indirect powers.

What can Hobbes as a political thinker mean to us? In his essay mentioned in Chapter I, p. 11, Helmut Schelsky placed him next to Machiavelli and Vico. It is a great merit to save the honor of the political thinker Hobbes. To us Hobbes remains of interest: His

numerous thoughts, images, and impressions, continue to live on, as is the case with anyone who transmits insights arrived at honestly. Looked at from the perspective of comparing those who have created political myths—Machiavelli, Hobbes, and Vico—the great difference and peculiarity of Hobbes become apparent.

In actuality, Vico did not produce a myth. But by conceiving the history of people to be a history of myths, by overcoming the historical blindness of Cartesian scientific principles, he advanced a new historical understanding. He thus neither forged a new myth, nor did he, as a person and a historical figure, become a myth himself. Nonetheless, as a true and great mythologist he discovered the force and meaning of myth for his era.

On the basis of his name and his political writings, Machiavelli did become mythic. Throughout the last four hundred years, his name has evoked an embittered and embattled symbol, and for that reason has continued to provoke the image of an especially effective and politically vivid celebrity. This myth of Machiavelli sets in with greatest ferocity at the end of the sixteenth century under the impact of the incredibly monstrous Bartholomew massacre of 1572. It gains momentum in the course of the world historical struggle that Anglo-Saxon Protestants and Roman Catholics waged against each other. Some sober sentences and disconnected phrases of the poor Florentine humanist served to give the world the moralistic horror picture: "Machiavellism." For more than a century it remained an effective summons to battle waged by the Evangelical north against all Catholic powers, especially against Spain and France. The experiences of the World War (1914–1918) waged against Germany have shown that the propagandistic striking force of this image is also useful against other powers. By gathering moral energies that permit themselves to be mobilized in the struggle against "Machiavellism," the shapers of Anglo-Saxon world propaganda and American President Wilson were able to stage a modern "crusade of democracy" and direct it at Germany.

In the nineteenth century the German philosophers Fichte and Hegel restored the honor of the Italian theorist. Above all, Fichte's 1807 essay on Machiavelli, which extolled him as a "truly lively

writer" and a "noble pagan," belongs to the great work of historical justice and objectivity that, like Herder's *Stimmen der Völker* and Schiller's effort to restore the honor of the Maid of Orlèans, has underscored the imposing achievements of the German mind. Because of the parallel historical events that occurred in the national unification of Italy and Germany, what became evident in the course of the nineteenth century was the emergence of an understanding of the true Machiavelli. Nevertheless, only Italian fascism hailed him as the intellectual originator of a political era, as the conqueror of a moralistic lie and a political cant, and as the exponent of the antimyth of heroic relevance.

In contrast, Hobbes is neither a mythologist nor a mythic figure. Only with the image of the leviathan did he approximate a myth. But it is precisely because of this image that he had spent his energies and failed in his endeavor to restore the natural unity. Although the image did not unequivocally conjure up a definite and a clear enemy, it contributed the insight that indivisible political unity was destroyed from within by the demolition work of indirect powers. However rich in political knowledge and apt characterizations, Hobbes' work is systematically thoughtful that it could not become a sure combat tool and the weapon of a simple, concrete decision. Like every rationalism that culminates in technology, the scientism of Hobbes had an activist character in demanding a cosmos that would be dependent on the conscious work of men. Yet not every form of philosophical activism and not every theory of action can be regarded as political thought. Hobbes recognized concepts and distinctions as weapons of a political struggle. What Hans Freyer said of Hegel, that he "misunderstood the crossroad character of political action," is even more true of the philosophical system of Hobbes. Looked at historically, Hobbes' theory of the state appeared deplorable in seventeenth-century England. His concepts contradicted England's concrete political reality just as the sober objective maxims of Machiavelli corresponded to those of Italy. The spiritual weapons forged by Hobbes did not serve his cause. But, as Hegel correctly says, weapons convey the substance of the fighter himself.

Nevertheless, even in his failure Hobbes remains an incomparable political teacher. The concepts of no other philosopher have exerted so much influence as those of Hobbes, even though they had so much of a negative impact on the influence of his thought. Nevertheless, his concepts, namely, those developed by the great teacher in the struggle against indirect powers, are recognized today as fruitful. Only now, in the fourth century after the publication of his work, does the picture of this great political thinker emerge clearly. In characterizing his influence of the people of his own century, he said, full of bitterness: *Doceo, sed frustra* [I teach, but in vain]. In the period that followed, he was the foremost, yet seldom mentioned by name, spiritual formulator of continental European theories of the state. His concepts informed the law state of the nineteenth century, but his image of the leviathan remained a myth of horror, and his most vivid characterizations deteriorated into slogans. Today we grasp the undiminished force of his polemics, understand the intrinsic honesty of his thinking, and admire the imperturbable spirit who fearlessly thought through man's existential anguish, and, as a true πρόμαχος [champion], destroyed the murky distinctions of indirect powers. To us he is thus the true teacher of a great political experience; lonely as every pioneer; misunderstood as is everyone whose political thought does not gain acceptance among his own people; unrewarded, as one who opened a gate through which others marched on; and yet in the immortal community of the great scholars of the ages, "a sole retriever of an ancient prudence." Across the centuries we reach out to him: *Non jam frustra doces, Thomas Hobbes!* [Thomas Hobbes, now you do not teach in vain!]

NOTE

1. I take the expression "arripiert" from the following place in Adolf von Harnack's "Christus praesens, Vicarius Christi," in *Sitzungsberichte der Preussischen Akademie der Wissenschaften*, XXXIV (1927), p. 441: "Vicarius Christi—dei—means to the Pope (Innocent III) the same what it has always and exclusively meant to the emperor: by God, invested ruler of the world. With this title the Pope (Innocent III) seized ("arripierte") the empire; for that is the content of that title."

APPENDIX

The State as Mechanism in Hobbes and Descartes

With a *humanitas* that is still philosophical in the classical sense, Descartes recognized all existing orders based in religion and tradition, in church and state. The mythical and demonical images that were so profuse in Hobbes' work cannot be found in Descartes'. Whereas the Englishman drew on his experience of the "state of nature," namely, the English civil war, as he constructed his theory of state, Descartes knew France only as a "state." Descartes used as a symbol for the state the image of a building constructed by an architect. That symbol was in keeping with the artwork of the Renaissance. It did not yet depict a technically mechanized image of the rationalistic-revolutionary theory of state—that is, the state as a clockwork, a machine, an automaton or apparatus, or in Hobbes' words, a *horologium*, a *machina*, an *automaton*.[1]

But the tolerant conservatism of Descartes should not deceive us; precisely because this philosopher understood the human body to be a mechanism, all things human, in their very core, had already been changed in a revolutionary manner. This change signaled the coming technical-industrial revolution. The mechanization of the state was, in comparison, secondary to and less direct than the mechanization of the human body. Though it is feasible to conceive of the state as an artificial mechanism without an analogical mechanization of the human body, the mechanization of the state may be an enlarged mirror image of the mechanistic conception of the human body. If so, its impact would be much clearer and more frightening than Hobbes'.

The starting point of Hobbes' construction of the state is fear of the state of nature; the goal and terminus is security of the civil,

stately condition. In the state of nature everyone can slay everyone else; everyone knows that everyone can slay everyone else; everyone is a foe and a competitor of everyone else—this is the well-known *bellum omnium contra omnes* [war of all against all]. In the civil, stately condition, all citizens are secure in their physical existence; there reign peace, security, and order. This is a familiar definition of police. Modern state and modern police came into being simultaneously, and the most vital institution of this security state is the police. Astonishingly Hobbes appropriates as a characteristic of the condition of peace brought about by the police the formula of Francis Bacon of Verulam and speaks about man becoming god to man, *homo homini deus*, whereas in the state of nature man was wolf to man, *homo homini lupus*. The terror of the state of nature drives anguished individuals together; their fear rises to an extreme; a spark of reason (*ratio*) flashes; and suddenly there stands in front of us a new god.

Who is this god who brings peace and security to people tormented by anguish, who transforms wolves into citizens and through this miracle proves himself to be a god, obviously only a "mortal god," a *deus mortalis*, as Hobbes calls him? If anywhere, then, Newton's remark that *deus est vox relationis* [god is a voice of respect] is applicable here. Nevertheless, the expression "mortal god" led to great misconceptions and misinterpretations.

Joseph Vialatoux, professor at the Institution des Chartreux in Lyons, renowned for his numerous economic and sociophilosophical writings, recently published a treatise on Hobbes in which he elevates him into the philosopher of the present-day totalism and ultimately, indiscriminately as a church father of bolshevism, fascism, and national socialism as well as German Christians.[2] Hobbes provided many things that made stereotyping easy for the French Catholic: the famous image of the all-devouring leviathan, turning-points such as *deus mortalis* [mortal god] and *homo homini deus*, the notorious thesis of the absolute state according to which every religion is designated a superstition except the one prescribed or sanctioned by the state. Casting a pall over Hobbes' image is the ambiguity of the catchword "total," which can have an

infinite number of meanings: some form of far-reaching utilization or sweeping destruction of individual freedom as well as some (basically only relative) changes in traditional limitations of the scope of civil liberties, centralization, the transformation of the traditional constitutional conception of the "separation of powers," the suspensions of earlier separations and distinctions, totality as aim and totality as means, and so on.

In contrast to Vialatoux, the distinguished French professor of public law, René Capitant, in his essay "Hobbes et l'État totalitaire,"[3] points to the individualistic character of Hobbes' construction of the state, and exposed the strong liberal proviso that cannot be stamped out in a covenant concluded by individuals. That conclusion was also stressed by Ferdinand Tönnies.[4] As far as individual freedom is concerned, what is also valid is: *tamen usque recurret* [until now it still comes back]. As a liberal democratic Frenchman, Capitant is, of course, an opponent of the "idéologie totalitaire qui fleurit de nos jours." Nevertheless, he rightly stresses that the control that Hobbes demanded that the state exercise over all scientific views was conceived as being only part of police security and order, not as part of a true "state religion." According to Capitant, Hobbes is "profondément individualiste et rationaliste." Like Descartes, he belongs to those solitary individuals who, in the seventeenth century, during the "heroic age of western rationalism," retreated into themselves and found the kind of wisdom that they could not obtain from a world that had changed too much. Capitant also conceded that the use of the famous image of leviathan, the monstrous creature from a fable, could make Hobbes appear as a "mystical totalist."

The reason why the confusion about Hobbes' theory of state is so great is because Hobbes actually uses three distinctly different representations for his "god." In the foreground stands conspicuously the notorious, mythical *leviathan*. The depiction of the juristically constructed covenant serves simultaneously to explain the appearance of a sovereign *person* brought about by representation. In addition, Hobbes transferred—and that seems to me to be the gist of his philosophy of state—the Cartesian conception of

man as a *mechanism with a soul* onto the "huge man," the state, made by him into a machine animated by the sovereign-representative person.

By its suggestive force the image of the leviathan overpowers and overshadows all other constructions and expositions, however precise they may be. Numerous characterizations by Hobbes have become winged words, as, for example, *bellum omnium contra omnes* or *homo homini lupus*. Some concepts—for example, the thought *nulla poena sine lege* [no punishment without law]—he had so thoroughly and systematically thought through that as a convincing formula it fell some time later, like a ripe fruit from a tree.

Other conceptions, in turn, are effective because of their political force. They make the concrete enemy evident. This observation becomes clear when one bears in mind the numerous impressive depictions in the *Leviathan*. As Tönnies correctly stressed, in contrast to works on natural law, the *Leviathan* is a preponderantly political treatise.[5] To these political images belong the depiction of the Roman [Catholic] Church as the kingdom of darkness and the depictions of clerics as lemurs and the pope as a gigantic ghost crowned with a tiara who sits on the grave of the Roman Empire (Chapter 47 of the Latin edition of *Leviathan*). Hobbes, whose other writings were placed on the index of prohibited books in 1653, was acting here as a participant in the historic world struggle that the English nation was carrying out against the Spanish world power and its allies, the papal church and the Jesuits. But, Hobbes' image of the leviathan has another, altogether different, meaning. In contrast to the later *Behemoth*,[6] it does not depict an enemy; it shows a god that assures peace and security. Nor is it a political friend-myth. It is too horrible and terrifying for that. Looked at closely, the use of the leviathan to represent Hobbes' theory of state is nothing other than a half-ironic literary idea born out of a fine sense of English humor. Only the enormous striking power implicit in the image of the mythical beast has led to the mistaken notion that this is the central idea of Hobbes' theory of the state. The sentences and the words that Hobbes used to introduce the leviathan do not leave any doubt

that he did not take this image to be believable conceptually, mythically, or demonically.

That Hobbes knew something about demons and demonology is shown in Chapter 45 and the note on page 242 of the 1651 English edition of the *Leviathan*. The leviathan in *The Book of Job*, Chapter 40, was known as a mythical image in the literature of the times. Unfortunately, detailed historical research concerning the utilization of the symbolism of this beast is still missing, but we know that Bodin, for example, who was knowledgeable about cabbalistic writings,[7] speaks in his *Daemonomania* (1581 Latin edition, Book II, Chapter 6, and Book Ill, Chapter 1) of the leviathan as a demon whose power cannot be withstood and whose satisfaction with the corporeal does not inhibit him from lying in wait for the spiritual. Bodin adds that all those who think they are capable of concluding a covenant with the leviathan should be aware of his multifaceted nature and recognize the difficulty or the impossibility of making him subservient to themselves.

Such views make it clear that the very mention of the name "leviathan" could evoke the recollection of dreadful Asiatic myths of an all-demanding Moloch or an all-trampling Golem. According to cabbalistic views, the leviathan is thought of as a huge animal with which the Jewish God plays daily for a few hours; however, at the beginning of the thousand-year kingdom, he is slaughtered and the blessed inhabitants of this kingdom divide and devour his flesh. All this is very interesting and could well be the mythical prototype of some communist theory of state and of the stateless and classless condition that are supposed to emerge after the abolition of the state.

But this was not the case with Hobbes. He used the image without horror and without reverence. In a critical place in the 1651 edition (p. 87), he said: "This is the generation of that great Leviathan or rather—*to speak more reverently*—of that Mortall God, [to which we owe under the Immortal God, our peace and defence]. The 1668 Latin edition, the same place, reads as follows: "Atque haec est Generatio magni illius Leviathan, vel, ut dignius loquar, Mortalis Dei cui Pacem et Protectionem sub Deo Immor-

tali debemus omnes." This form is in accord with the essential meaning of the image. It would indeed be a peculiar philosophy of the state if its entire chain of thought was based on the notion of poor human beings fleeing in total fear from the state of nature into the fear of a Moloch or a Golem. Locke brought that objection against Hobbes,[8] but it missed the point. For Hobbes it was relevant for the state to overcome the anarchy of the feudal estates' and the church's right of resistance and confront medieval pluralism with the rational unity of a rational centralized state. If one can speak here of totality, then it must be taken into consideration that the totality of this kind of state power always accords with the total responsibility for protecting and securing the safety of citizens and that obedience as well as the renunciation of every right of resistance that can be demanded by this god is only the correlate of true protection that he guarantees. If protection ceases, every obligation to obey also ceases, and the individual once more regains his natural freedom.[9] The "relation between protection and obedience" is the cardinal point of Hobbes' construction of the state. All one-sided conceptions of totality are incompatible with this construct.

The introduction of the leviathan by Hobbes does not even suggest the devious opening of a side door to the dreamland of excessive hopes of progress, as is the case with some rationalists to whom symbols or images constitute the other side of rationalism. The most famous example of this kind of duality is the depiction of mankind's paradise by Condorcet (*Esquisse d'un tableau historique des progrès de l'esprit humain* [1794]), which is to be brought about by reason and education. It bears some resemblance to the basic constructs of Hobbes: Life is of interest only insofar as it concerns the here and the now, the physical existence of the individual, of living beings; the most important and highest goals are security and a possible prolongation of this kind of physical existence. The great mathematician Condorcet considers the problem of immortality to be a mathematically infinitesimal one. He believes that in the infinity of time, by an ever-gradual postponement of death from old age, it will finally be possible to arrive at some kind of temporal immortality and eternity.

What is explicit in Condorcet's work is that the state for more than a century has performed its historic task by providing public security and order. Condorcet therefore no longer considers man to be radically evil and wolflike but good and educable. In this phase of the rationalist doctrine, the compulsory and educational work of the state is regarded as historically timebound, and it can be expected that the state will one day make itself superfluous. In other words, the dawn of the day when the great leviathan can be slaughtered is already visible.

Hobbes is far removed from such conceptions. Though allowing for the possibility of commanding obedience by compulsion and exerting influence by education, Hobbes reveals in his theory no great illusion about human nature. It is precisely this pessimistic attitude that determined his rationalism and strongly influenced eighteenth-century Enlightenment thinking, especially the state theory of Frederick the Great, which was influenced to greater extent by Hobbes than by Locke.[10]

The construction of the covenant, which enabled Hobbes to render a juristic interpretation of the sovereign-representative person, did not suggest the totality of the state. The indecisiveness that appears in the otherwise consistent train of Hobbes' thought occurs at the juristically decisive point, an observation that has already been noted, namely, in the legal explanation of the foundation of the state as a covenant entered into by individuals.[11] The covenant was conceived in an entirely individualistic manner; all ties and groupings are dissolved; fear brought atomized individuals together, a spark of reason flashed, and a consensus about security emerged. If this construct is viewed from its result, from the perspective of the state, what it reveals is that the state is more than and something different from a covenant concluded by individuals; for although it results in forging a consensus of all with all, in essence, it is not a state, but only a social covenant.

What also becomes apparent is that the sovereign-representative person does not come about as a result of but because of this consensus. The sovereign-representative person is much more than the sum total of all the participating particular wills. To be

sure, the accumulated anguish of individuals who fear for their lives brings about a new power, but it affirms rather than creates this new god. To this extent the new god is transcendent vis-à-vis all contractual partners of the covenant and vis-à-vis the sum total, obviously only in a juristic and not in a metaphysical sense. The sovereign-representative person cannot thus delay the complete mechanization of the state. It is only a timebound expression of the baroque idea of representation of the seventeenth century, of absolutism, not of a "totalism." Because the state in Hobbes' theory is not a total person—because its sovereign-representative person is only the soul of the "huge man" state—the process of mechanization by means of this personification is not only not delayed but actually completed. This personalistic element is drawn into the mechanization process and becomes absorbed by it. As a totality, the state is body and soul, a *homo artificialis*, and, as such, a machine. It is a man-made product. Its material and maker, *materia* and *artifex*, machine and engineer are one and the same, namely men. Also the soul thereby becomes a mere component of a machine artificially manufactured by men. The end result is therefore not a "huge man," but a "huge machine," a gigantic mechanism whose function is to protect the physical existence of men whom it rules and guards.

Neither the drape in the foreground that shows a fantastic picture of the leviathan nor the contemporaneous animation expressed by the sovereign-representative person can change the fact that because of Hobbes, the state became a huge machine. Here, in its technical-industrial revolutionary character, lies the pioneering influence of Hobbes' philosophy of the state. Its truly revolutionary character was recognized first by August Comte, a man endowed with great historical intuition. The state that arose and succeeded on the European continent in the seventeenth century was a product of man and was distinct from all earlier forms of the political unit. The state can be viewed as the first product of the technical age, as the first modern mechanism on a large scale, or in the apt formulation of Hugo Fischer, as the "machina machinarum." With its development there emerged the essentially intel-

lectual or sociological precondition for the technical-industrial age that was to ensue. By then it had become apparent that the state itself was the typical or even the prototypical work of the new age. Right and law and all other notions of public life were transformed. "The positive became for us the source of value."[12] Right became positive law, lawfulness became legality, legality became the positivist mode of operation of the machinery of state. Hence all medieval notions of legal concepts and institutions, especially the feudal and estates right to resistance, were for this type of legality only disturbances that needed to be put aside. But this codification, like all such processes, led to new calculations and thus to the possibility of mastering this machine as well as security and freedom so that ultimately a specific new notion of the "constitutional state" could arise in the sense that laws are conducive to the calculable workings of the state. All those observations are recognizable in Hobbes' theory of the state.

The decisive metaphysical step in the construction of the theory of the state occurred with the conception of the state as a mechanism. All that followed—as, for example, the development from the clock mechanism to the steam engine, to the electric motor, to chemical or to biological processes—resulted in the further development of technology and scientific thinking, which did not need any new metaphysical determination. Through the mechanization of the "huge man," the μάκρος ἄνθρωπος, Hobbes leapt decisively ahead of Descartes and made a significant anthropological interpretation of man. The first metaphysical leap was made by Descartes at precisely the moment when the human body was conceived to be a machine and the human being, consisting of body and soul, was postulated to be in its entirety an intellect intent on a machine. The transfer of this notion to the "huge man" state was thus near. It was consummated by Hobbes, but it led, as shown, to the transformation of the huge man's soul into a part of a machine. Once the huge man's body and soul became a machine, the transfer back became feasible, and even the little man could become a *homme-machine*. The mechanization of the concept of a state thus completed the mechanization of the anthropological image of man.

Just as a mechanism is incapable of any totality, the here and now of an individual's existence cannot attain a meaningful totality. For the word and concept *totality* to remain meaningful and not to become a misleading catchword, it must rest on a specific philosophical connection. Together with Carl August Emge, it can be perceived in the "finite infinity" of Hegel's philosophy, which seems to me to be more accurate than the attempt by E. Voegelin to trace all the conceptions of totality to an Averroist identity of part and whole.[13] The process of identifying other philosophical systems that render the idea of totality possible will not be undertaken here; for that reason I am also leaving aside a view expressed by Erik Peterson in which he asserted that the "total" concepts of modern times are not at all meant as concepts but as myths. Totalization thus means mythization. Accordingly the philosophy of Schelling or of Georges Sorel would become associated with such conceptions of totality because they relate to their philosophical thoughts. At any rate, the "temporal divinity" that Hegel ascribes to the leading people in world history is especially apt to represent the totality in the specific meaning of "finite infinity" and of the typical connection between immanence and transcendence.[14] Hence the "temporal god" of Hegel's philosophy is also a present god, *numen praesens*, and not a representation. He has no spiritual kinship with the "mortal god" of Hobbes' philosophy of the state. On the contrary, his "deus mortalis" is a machine whose "mortality" is based on the fact that one day it may be shattered by civil war or rebellion.

NOTES

1. Hobbes was an admirer of Harvey (cf. Ferdinand Tönnies, *Einführung zu Julius Lips: Die Stellung des Thomas Hobbes zu den politischen Parteien der grossen englischen Revolution* [Leipzig], 1927, pp. 4–5), whose exposition the circulatory system determined the mechanico-physical conceptions of the human body (the heart as pump, blood circulation a hydraulic problem, etc.).

2. *La Cité de Hobbes; Theorie de l'État totalitaire, Essai sur la conception naturaliste de la civilisation* (Paris/Lyon, 1935).

3. *Archives de Philosophie du droit et de Sociologie juridique*, nos. 1–2 (1936), p. 46.

4. *Thomas Hobbes, Leben und Lehre*, 3rd ed. (Stuttgart, 1925), p. 257.

5. *Ibid.*, pp. 248, 255; hence the adaptation that appeared in the 1668 Latin edition of *Leviathan* is explained by the political situation (that is, the restoration of the monarchy that had taken place in the meantime) that had changed since the publication of the 1651 English edition, which reckoned with Cromwell's victory.

6. *Behemoth* (likewise in *The Book of Job*) is only a historical-political description of the 1640–1660 English Revolution; the image of the behemoth is meant to be a depiction of the horrors of a revolution. Notwithstanding the image, the royal government censor denied permission for its publication, and the book written in 1668 appeared only after Hobbes' death.

7. Friedrich von Bezold, "Jean Bodin als Okkultist und seine *Daemonomania*," in *Historische Zeitschrift*, 105 (1910), pp. 1ff.; this article was also reprinted in Bezold's collected writings; see further Rabbi J. Guttmann, *Jean Bodin in seinen Beziehungen zum Judentum* (Breslau, 1906), p. 16, and concerning the correction of Guttmann's assertions regarding Bodin's ancestry by Emile Pasqué in *Revue d'historie de l'Eglise de France*, XIX (1933), pp. 457–62; likewise the review of Francisco J. Conde, "El Pensamiento Politico de Bodino," in *Deutsche Juristen-Zeitung* (1936), cols. 181–82.

8. *Civil Government*, II, ¶93; for fear of cats and foxes men would consider it safe to be devoured by a lion. This remark by Locke is directed at Hobbes, even though the latter's name is not mentioned.

9. For that reason, it was not easy for Hobbes after 1660, during the period of Restoration, to defend himself against the accusations of the reactionaries who depicted him as an unprincipled opportunist who justified submission to Cromwell; about this cf.

Hobbes own 1662 writing: *Considerations upon the Reputation, Loyalty, Manners and Religion of Thomas Hobbes of Malmesbury.*

10. Gisbert Beyerhaus, *Friedrich der Grosse und das 18. Jahrhundert* (Bonn, 1931), p. 11. Cf. Tönnies, *Thomas Hobbes, Leben und Lehre*, p. 294, about Dilthey's remark concerning Hobbes' influence on the mathematico-scientific philosophy of the eighteenth century and the positivism from d'Alembert until Comte; see also Joseph Vialatoux, *Philosophie économique* (1933), p. 32.

11. F. Atger, *Essai sur l'historie des doctrines du contrat social* (Nimes, 1906 [Thèse de Montpellier]), p. 176.

12. Carl Auguste Emge, *Ein Rechtsphilosoph wandert durch die alte Philosophie* (Berlin, 1936), p. 72.

13. Eric Voegelin, *Der autoritäre Staat* (Vienna, 1936), p. 23.

14. H. Welzel, *Über die Grundlagen der Staatsphilosophie Hegels* (in the collection *Volk und Hochschule im Umbruch* [Oldenburg, 1937], p. 100) cites Hegel's sentence from *Philosophy of History* (p. 119 in the jubilee edition), according to which the principles of the spirit of peoples are only moments in a necessary phase of the one universal spirit "that elevates and realizes itself through them in history into a self-comprehending totality." Welzel stresses the universal-spiritual at the expense of the "chipped away" characteristic of the "chthonic forces" of the Hegelian notion of peoples. I will not contradict this, but I don't believe that on that account Hegel becomes an Averroist just as much as Aristotle is one because of the "heavenly sphere in itself." After my essay was set in print I learned about two additional remarks in respect to the problem of "totality": Norbert Gürke in the publication *Völkerbund und Völkerrecht* (July 1937), assumes in respect to the idea of total war the position whereby, starting from a notion of the political that closes its eyes to the politically critical case, war, thus refusing to see enemies and precisely by means of this hopes to arrive at a totality. William Gueydan de Roussel, known to the German readers through his essay "Der demaskierte Staat," *Europäische Revue* (September

1936), in a yet not published but kindly made available to me article considers precisely the conception of the "mechanism" in Hobbes to be mythico-romantic. He also interprets the entire scientific representation of the seventeenth to nineteenth centuries to be a myth, and the present-day process of the totalization is only a dialectically necessary phase of the great process of neutralization in which "totality" becomes the opposite of "universality."

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CARL SCHMITT (1888–1985) was a legal and political theorist and constitutional lawyer. He is the author of several books published by the University of Chicago Press, including *The Concept of the Political* and *Political Theology*.

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